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BUREAU OF LAND MANAGEMENT
DISTRICT LAND OFFICE
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BILLINGS, MONTANA

Still in effect 5/26/54

See Circ. 1756 for 65.20

Circular No. 1700

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C.

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS; INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

SUBCHAPTER A - ALASKA

PART 61 - CERTIFICATES AND SCRIP

Section 61.7(b) is amended to read as follows:

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived, and that it is not within a distance of 80 rods along any navigable or other waters from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application or the lands have been restored from reservation (R.S. 2306, 2307; 43 U.S.C. 274, 278).

PART 64 - HOMESITES OR HEADQUARTERS

The first paragraph and paragraph (g) of section 64.4 are amended to read as follows:

Applications under the act of March 3, 1927, must be filed in duplicate in the district land office within which the land is situated, and the claim must be in reasonably compact form.

(g) That at the date of the initiation of the claim the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights, or from any trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where petition for restoration based on an equitable claim is filed with the application, or the land has been restored from reservation (44 Stat. 1364; 48 U.S.C. 461).

Section 64.7(e) is amended to read as follows:

(e) That at the date of the initiation of the claim the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights, or from any trade and manufacturing site, homestead, Indian or Eskimo allotment or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from reservation (48 Stat. 809; 48 U.S.C. 461).

PART 65 - HOMESTEADS

Section 65.6(a) is amended to read as follows:

(a) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration based on an equitable claim is filed with the application, or the land has been restored from the reservation (30 Stat. 409, as amended; 48 U.S.C. 371).

The second paragraph of Section 65.20 is amended to read as follows:

"Petition for survey should be filed in duplicate in the proper district land office, describing the land settled upon by approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. The petition should show the date when the settlement was made, the dates from which and to which the settler has resided upon the land, the number of acres cultivated each year and the results of the cultivation, and the character and value of the improvements on the land. The petition should also show that the land does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from the reservation. The petition must be signed by the applicant and should be corroborated by the statements of two persons having knowledge of the facts."

PART 67 - INDIANS AND ESKIMOS

Section 67.8 is amended to read as follows:

67.8 Shore Space. An Indian allotment may not extend more than 160 rods along the shore of any navigable water unless the restriction as to length of claim has been waived and it may not extend within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homesite, Indian or Eskimo allotment, or school indemnity selection, unless the land has been restored from reservation, or a petition for restoration based on an equitable claim is filed with the application (34 Stat. 197; 48 U.S.C. 357).

PART 72 - PARKS, RECREATIONAL AND CEMETERY SITES

Section 72.3(f) is amended to read as follows:

(f) The statement of the applicant, corroborated by the statement of two witnesses, that the land is vacant, unreserved, unoccupied, unimproved, or unclaimed by anyone other than the applicant; that the land does not abut more than 160 rods upon navigable waters or that the restriction has been waived, and that the land is not within a distance of 80 rods along any such water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that it has been restored from reservation; and that the land is not included within an area which is reserved because of hot or medicinal springs thereon. If the facts are contrary as to any of the matters set forth in this paragraph, a complete statement should be made thereof. (54 Stat. 1192; 48 U.S.C. 363).

PART 76 - SCHOOL LAND RESERVATION: GRANT FOR UNIVERSITY

Section 76.3(b) is amended to read as follows:

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived and that the land is not within a distance of 80 rods along any navigable or other water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights, or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection, or that the land has been restored from reservation (R.S. 453, 2478, 43 U.S.C. 2, 1201).

Section 76.7(b) is amended to read as follows:

(b) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived; and that it is not within a distance of 80 rods along any navigable or other waters from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights, or as a trade and manufacturing site, homestead, Indian or Eskimo allotment or school indemnity selection, or that the land has been restored from reservation. (R.S. 453, 2478; 43 U.S.C. 2, 1201)

PART 81 - TRADE AND MANUFACTURING SITES

Section 81.6(d) is amended to read as follows:

(d) That at the date of the initiation of the claim, the land was not within a distance of 80 rods along any navigable water from any homesite or headquarter site authorized by the acts of March 3, 1927 and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U.S.C. 461), or from any location theretofore made with soldiers' additional rights, or from a trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application or the land has been restored from reservation. (R.S. 453, 2478; 43 U.S.C. 2, 1201).

(Sgd) MARION CLAWSON

Director

Approved: September 28, 1948

(Sgd) C. GIRARD DAVIDSON

Acting Secretary of the Interior

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Circular No. 1701

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

Obsolete - Replaced
by Circ. 1825

CODE OF FEDERAL REGULATIONS
TITLE 43—PUBLIC LANDS: INTERIOR
CHAPTER I—BUREAU OF LAND MANAGEMENT

PART 245—RIGHTS-OF-WAY OVER AND UPON PUBLIC LANDS AND RESERVATIONS OF THE UNITED STATES FOR ELECTRICAL PLANTS AND TRANSMISSION LINES

The first sentence of section 245.21 is amended and new paragraphs are added, to read as follows:

Section 245.21 Stipulation required as a condition precedent to the approval of permit. The applicant shall file with the application required under section 245.9 of these regulations, a duly executed stipulation expressly agreeing to accept the power permit subject to the following terms and conditions, excepting those which the Secretary may waive in a particular case, to wit: * * *

(v) Upon such terms and conditions and in such manner as the Secretary may direct, to permit the Government or any agency or instrumentality thereof, hereinafter referred to as the Government, to interconnect its transmission facilities with the transmission line of which the line for which a permit is requested forms a part; to construct, operate and maintain such line and all related facilities, wherever situated, in such manner and condition as to make available to the Government the effective use of such line for the transmission of electric power and energy in such manner and for such amounts as will not unreasonably interfere with the permittee's use of the line; and to permit the Government to so use the line in accordance with terms and conditions agreed upon by the Secretary and the permittee, including the terms upon which the Government will pay its proportionate share of the monthly cost of the lines.

(w) That the right-of-way or site shall be subject to the express condition that the exercise or use thereof will not interfere in any way with the leasing and administration by the United States of the lands affected thereby, or with the development of oil, gas, potassium, sodium or other leasable minerals therefrom; and that the permittee agrees and consents to the occupancy and use by the United States, its permittees or lessees of any part of the right-of-way not actually occupied by the project, for necessary operations incident to the development and production of oil, gas, potassium, sodium or other leasable minerals.

(x) That there is reserved right-of-way for reservoirs, dams, and other works which may hereafter be constructed for the development of hydroelectric power or irrigation, under authority of the United States, and that the use of the right-of-way by the permittee for the purpose authorized shall be discontinued without liability or expense to the United States when found by the Secretary to be in conflict with such power or irrigation works.

(y) To make provision, or bear the reasonable cost (as may be determined by the Secretary) of making provision for avoiding inductive interference between any project transmission line or other project works constructed, operated, or maintained by it on the right-of-way authorized under the permit or easement, and any radio installation, telephone line or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof. This provision shall not relieve the permittee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

(Sgd) MARION CLAWSON

Director.

Approved: October 14, 1948

(Sgd) C. GIRARD DAVIDSON

Acting Secretary of the Interior

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L-1

Circular No. 1704

Office Copy

Still in effect
3/26/51 pk

See Circ. 1766

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT
SUBCHAPTER A--ALASKA

PART 66--HOMESTEADS ON COAL, OIL AND GAS LANDS

The first paragraph of section 66.2 as amended by Circular No. 1675 of March 16, 1948, is further amended to read as follows:

> An application to make homestead entry for lands embraced in an oil and gas lease, or a coal permit or lease, or an application for such a lease, or permit, should be suspended and forwarded to the regional administrator for consideration and instructions.

The last paragraph of the section mentioned is amended to read as follows:

> Like notations will be made by the managers on the face of the notices of allowance issued on applications filed under this Act. If, prior to the date of the filing of the homestead applications, the land was embraced in an oil and gas lease, or a coal permit or lease, or an application for such a lease, or permit, the notice of allowance should contain substantially the following:
>
> "This land is subject to the right of any prior mineral permittee or lessee, or of any prior applicant for a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the non-mineral entryman or patentee for crop and improvement damages resulting from such mineral activity."

(R.S. 453, 2478; 43 U.S.C. 2, 1201).

(Sgd) ROSCOE E. BELL

Acting Director.

Approved: November 2, 1948

(Sgd) OCSAR L. CHAPMAN

Under Secretary of the Interior.

47102

Distribution L-1

~~Revised by Circ. 1760~~

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See ~~1760 (obsolete)~~
+
1807

Circular No. 1705

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43—PUBLIC LANDS: INTERIOR
CHAPTER I—BUREAU OF LAND MANAGEMENT

PART 160—GRAZING LEASES

This part is hereby completely revised to read as follows:

Sec.	
160.1	Statutory authority.
160.2	Definitions.
160.3	Classes of applicants; preference rights.
160.4	Qualifications of applicants.
160.5	Filing of applications; copies necessary.
160.6	No right conferred by application, prior to lease.
160.7	Protests.
160.8	Leases of withdrawn or reserved lands.
160.9	Action on defective applications.
160.10	Offer and issuance of lease; disposition of protests and conflicting applications.
160.11	Reduction in leased area or number of stock to be grazed.
160.12	Leased lands subject to classification and disposition; compensation to lessee for improvements and damages.
160.13	Rental.
160.14	Term of lease.
160.15	Filing of petitions for renewals.
160.16	Construction and maintenance of improvements.
160.17	Removal of improvements.
160.18	Cancellation of lease.
160.19	Inspection of leased premises.
160.20	Assignment of lease; subleases of leased land not authorized.
160.21	Leases pledged as security for loans.
160.22	Appeals.

Authority: Sec. 160.1 to 160.22, inclusive, issued under Sec. 15. 48 Stat. 1275, Sec. 5, 49 Stat. 1978, 43 U.S.C. sec. 315m.

Sec. 160.1 Statutory Authority. Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior, to lease for grazing purposes, vacant, unappropriated and unreserved public lands outside of established grazing districts in the contintental United States only.

Sec. 160.2 Definitions. (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional Administrator" means the Regional Administrator, Bureau of Land Management.

(d) "Manager" means Manager of the District Land Office. Where there is no District Land Office, it means the Director, Bureau of Land Management.

(e) "Signing Officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field Office" means any office of the Bureau of Land Management, including the District Land Office, near the lands applied for and in the State in which such lands are situated. If there is no District Land Office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D. C.

(g) "The Act" means the act of June 28, 1934 (48 Stat. 1275), as amended.

Sec. 160.3 Classes of applicants; preference rights. The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less[1] for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[2]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

1/ Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this sub-section and the preference accorded under succeeding sub-section (b) is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

2/ By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

Sec. 160.4 Qualifications of Applicants. An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen, Provided, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under (a) and (b), next above.

Sec. 160.5 Filing of applications; copies necessary. Any application for a lease should be submitted on Form 4-721 and filed in any field office of the Bureau of Land Management in the State in which such lands are situated. If there is no field office in the State, the application should be filed with the Director, Bureau of Land Management, Washington 25, D. C. The application must be filed in triplicate, except where it embraces lands within the jurisdiction of more than one district land office, in which event it must be furnished in quadruplicate. The application must be signed by the applicant, but need not be under oath.[3]

Sec. 160.6 No right conferred by application, prior to lease. The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

Sec. 160.7 Protests. Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest, and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

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[3] 18, U.S.C. sec. 80, makes it a crime for any person knowingly or willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement as to any matter within its jurisdiction.

Sec. 160.8 Leases of withdrawn or reserved lands. Leases may be issued for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[4] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with the regulations, 43 CFR 295.7(c). Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed by the Director of the Bureau of Land Management for the protection and use of the land for the purpose for which it was withdrawn or reserved.

Sec. 160.9 Action on defective application or where the lands applied for are not subject to grazing leasing. Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, otherwise appropriated or reserved and not subject to lease under the Act, or not public land, a manager, if his office has land status, or a signing officer shall reject the application.

Sec. 160.10 Offer and issuance of lease; disposition of protests and conflicting applications. The signing officer, after making provision for the area, term, rental, and allowance of forage for wildlife, and within the discretion of the signing officer, the number of livestock to be grazed, proper grazing season, or reservations for authorized trailing across the land, in the proposed lease, shall forward it, in quadruplicate, on Form 4-722a, to the applicant for execution. After execution, and within a period not less than fifteen days from the receipt of the proposed lease, the applicant will return the proposed lease, together with payment of the first years rental, computed under Sec. 160.13, to the signing officer. If all is found to be regular, a lease will be issued by the signing officer after final action has been taken on any protests or conflicting applications which may have been filed.

Where it is determined that more than one applicant should receive a lease and a division of the lands is necessary, the conflicting applicants will be afforded an opportunity to agree to the division of such lands. If an acceptable adjustment cannot be made by the parties in interest, the matter will be determined by the signing officer in the light of all available information.

After the proposed lease has been transmitted to an applicant, and if such lease is executed by him, any conflicting grazing lease application filed subsequent to such transmission will be rejected as to any lands included in the proposed lease.

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[4] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with the principles of section 15 leases, under authority of subsection (1) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U.S.C., sec. 501).

Sec. 160.11 Reduction in leased area or number of stock to be grazed. The leased area may be reduced if it is unreasonably excessive for the number of stock owned by the lessee, or if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stockdriveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes. The number of stock authorized to be grazed may also be reduced if it is determined that the leased area lacks sufficient forage to carry such authorized number of stock. In the case of any such reduction, a proportionate decrease will be made in the annual rental charges.

No request of any agency of the Federal Government for the withdrawal of land embraced in a grazing lease for governmental use under this section will be approved unless such agency shall agree to compensate the lessee for the loss suffered by the cancellation, or reduction in the area of the lease by an amount which such agency shall determine to be reasonable and proper.

Sec. 160.12 Leased lands subject to classification and disposition; Compensation to lessee for improvements and damages. Lands embraced in a grazing lease are subject to classification, regardless of whether an application for classification of any such lands has been filed, and disposition under the provisions of sections 7 and 14 of the act of June 28, 1934 (48 Stat. 1272), as amended June 26, 1936 (49 Stat. 1976, 43 U.S.C. sec. 315f), or other public land laws; Provided, That before any application for such classification and disposition is allowed, evidence is furnished that the applicant has agreed to compensate the lessee for any grazing improvements placed on the lands under the authority of the lease, and, in addition, for increased costs in the lessee's grazing operations during the unexpired term of the lease. In any event the amount allowed because of such increased operating costs shall not exceed an amount equal to three times the annual rental of the lands removed from his leasehold. If the interested parties are unable to reach such an agreement, the amount and time for payment shall be fixed by the signing officer. The failure of the applicant to pay the lessee in accordance with the agreement or the amount fixed by the signing officer, within the time allowed for payment, shall be just cause for cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application.

Where part of the lands embraced in a grazing lease are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold.

Sec. 160.13 Rental. The lessee shall pay, in accordance with the terms of the lease, an annual rental computed in conformity with the following rate tabulations, unless for sufficient reasons a different rate is authorized by the Director:

GRAZING RENTAL DATE TABULATION

Estimated grazing capacity in acres per animal unit month.	Estimated grazing capacity in animal units year-long per section.	YEARLY lease rate per acre.
107.00	0.5	$ 0.001
53.00	1.0	.002
38.00	1.5	.003
25.00	2.0	.004
20.00	2.5	.005
18.00	3.0	.006
16.00	3.5	.007
14.00	4.0	.008
12.00	4.5	.009
11.00	5.0	.010
10.00	6.0	.012
7.50	7.0	.014
6.50	8.0	.017
6.00	9.0	.019
5.50	10.0	.020
5.00	11.0	.023
4.50	12.0	.025
4.00	13.0	.027
3.75.	14.0	.029
3.50	15.0	.030
3.25	16.0	.033
3.00	17.0	.035
2.75	19.0	.040
2.50	21.0	.045
2.25	24.0	.050
2.00	27.0	.055
1.75	30.0	.065
1.50	36.0	.075
1.25	43.0	.090
1.00	53.0	.110
0.50	107.0	.220
0.25	213.0	.440

One cow or one horse or five sheep or five goats constitute one animal unit. The rental charge will not in any case be fixed at less than $1 per annum. The rental may be adjusted to reflect differences in numbers of livestock authorized to be grazed, changes in carrying capacity, and changes in authorized rates of rental at the end of the third year of the lease and at the end of each three-year period thereafter.

Sec. 160.14 Term of lease. A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

Sec. 160.15 Filing of petitions for renewals. A lessee who desires to renew a lease should file in triplicate approximately 90 days prior to the expiration of the lease a petition for its renewal on Form 4-725. The petition may include a request for the consolidation of other outstanding grazing leases held by the lessee. The filing of a petition for renewal does not confer on the lessee any preference right to a renewal. The timely filing of a petition will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the terms of the prior lease pending final action on the petition.

Sec. 160.16 Construction and maintenance of improvements - (a) Permit required. After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses, provided that a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the State in which the leased lands are located with respect to the cost and maintenance of fences.

(b) Applications for permits and cooperative agreements. Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on Form 4-1115 and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on Form 4-1119.

(c) Action on the application. Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

Sec. 160.17 Removal of improvements. Upon the expiration of a lease or its earlier termination, the signing officer may, in his discretion and upon a written petition filed by the lessee within 30 days from date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that may have been placed upon the leased lands under authority of a section 15 lease executed prior to the effective date of those regulations, and, thereafter, under a permit issued under the said section. The amount of such compensation shall be determined in accordance with the procedure set forth in Sec. 160.12. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period, such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

Sec. 160.18 Cancellation of lease. If the lessee shall fail to comply with any of the provisions of these regulations or of the lease, and such default shall continue for 60 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and canceled by the signing officer.

Sec. 160.19 Inspection of leased premises. The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

Sec. 160.20 Assignment of lease; subleases of leased land not authorized. Proposed assignments of a lease must be filed within 90 days after execution in the office of the signing officer and may be approved by the signing officer. The assignments must contain all of the terms and conditions agreed upon by the parties thereto, must be accompanied by the same showing by the assignee as is required of applicants for a lease; and must be supported by a showing that the assignee agrees to be bound by the provisions of the lease. No assignment will be recognized unless and until approved. Subleases are not authorized.

Sec. 160.21 Leases pledged as security for lands. (a) A lease may be pledged as security for a loan of $500 or more from a lending agency when the loan is made for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may ascertain from the signing officer the status of the grazing lease and other pertinent information concerning the lease.

(b) Upon request of the borrower-lessee, where such extension will be in accordance with applicable law and not contrary to the public interest, the lease may be extended for a period of ten years from the date of the loan subject to such terms and conditions as are then provided by these regulations.

(c) In case the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its tenants on the property, if qualified, or any person who purchases the property from such agency, if qualified, on application, shall be recognized in lieu of the lessee. If in making a sale the lending agency takes back a mortgage on the property, the agency shall be entitled to the same consideration as in the case of the original loan.

(d) Where a lending agency files in the office of the signing officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any action taken affecting the lease.

Sec. 160.22 Appeals; filing. An appeal from any decision rendered pursuant to these regulations may be taken to the Director and the Secretary, in accordance with the Rules of Practice (43 CFR, Part 221). The appeal should be filed with the officer who rendered the decision.

(Sgd) Marion Clawson
Director.

Approved: November 4, 1948

(Sgd) Mastin G. White
Acting Assistant Secretary of
the Interior.

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L-1

47240

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Surveys

All in effect 5/28/54 ab

Circular No. 1706

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 280--SURVEYS

AUTHORITY: Sections 280.1 to 280.10 issued under R.S. 453, 2478; 43 U.S.C. 2, 1201.

Part 280 is revised to read as follows:

SURVEYING THE PUBLIC LANDS

Section 280.1 Cadastral surveying activities under jurisdiction of the Director, Bureau of Land Management. In the establishment of the Bureau of Land Management by Reorganization Plan No. 3 of 1946, the office of Supervisor of Surveys was abolished and the functions and powers thereof were transferred to the Secretary of the Interior, to be performed by such officers or agencies of the Department as might be designated by the Secretary. Under that authority, the functions and powers formerly exercised by the Supervisor of Surveys were delegated to the Chief Cadastral Engineer, subject to the supervision of the Director, Bureau of Land Management. In the general reorganization and realignment of functions of the Bureau, the office of Chief Cadastral Engineer has been abolished, and the functions of that office have been delegated to the Director.

By this sequence, the cadastral surveying work of the Bureau of Land Management has been placed under the immediate jurisdiction of the Director, subject to the direction and control of the Secretary of the Interior. Certain functions relating to specific phases of the cadastral surveying work have been delegated to the regional administrators.

280.2 Application for original survey. Application for the original extension of the rectangular system of public land surveys to include unsurveyed townships should be filed in duplicate with the public survey office of the State in which the lands are situated. The application may be in letter form, and should describe the unsurveyed area by township and range of the public surveys, and should set forth the interest of the applicant in the land and the basis of need for extension of the surveys.

280.3 Application for survey of mining claims. Application for the survey of a mining claim should be filed with the public survey office in the State in which the claim is situated. The cadastral engineer in charge of that office will issue the necessary order for survey, and will administer the work in connection with such survey, including approval of the plat and field notes thereof and certification as to expenditures made upon the claim. If there be no public survey office in the State in which the claim is situated, the application should be filed with the Director, Bureau of Land Management, Washington 25, D. C.

280.4 Mineral surveyors to be appointed by regional administrators. The appointment of mineral surveyors pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39) and 43 CFR 185.50, will be made by the regional administrators; application for such appointment should be made to the appropriate regional administrator.

SURVEY OF ISLANDS OR OTHER LANDS OMITTED FROM THE ORIGINAL SURVEY.

280.5 Application for survey of islands or other omitted lands. Application for the survey of an island or other land omitted from the original survey should be made on Form 4-022a, or its equivalent, and filed in duplicate with the public survey office in the State in which the lands are situated, or with the Director, Bureau of Land Management, Washington 25, D. C., if there be no public survey office in the State.

280.6 Notice of intended application to be served on State officials and adjacent land owners. Notice of intention to apply for the survey of an island or other land omitted from the original survey must be served on the adjacent land owners, and the Attorney General and the Secretary of State for the State in which the land is situated, at least 30 days prior to the date of application for survey. Service may be had by registered mail or in person, evidence of which may consist of the registry return receipt or signed acknowledgment of service. A copy of each notice, with proof of service thereof must be filed with the application. Failure to obtain evidence of service may be explained.

No particular form of notice is prescribed. The notice must make it clear, however, that the land covered by the application is contended to be public land of the United States and subject to survey and administration as such, and that any protest against the proposed survey should be filed with the public survey office, or with the Director, Bureau of Land Management, Washington 25, D. C., if there be no public survey office in the State. It must be shown what particular surveyed lands opposite the island, or adjoining the unsurveyed land, are owned by the adjacent land owner on whom the notice is served.

280.7 Evidence required as to character of land and its existence at time of original survey. An application for the survey of an island or other land omitted from the original survey must be accompanied by evidence showing that the land was in existence and above ordinary high-water elevation when the State was admitted into the Union, and when the adjacent lands were surveyed. Such evidence should consist of statements from at least two persons familiar with the land, as to its size, elevation and appearance, and the species, size, and age of the timber growth thereon, or nature of other vegetation. 1/

280.8 Diagram required with application. A diagram showing the approximate configuration of the island or other land applied for, and its location with reference to the public land surveys, must accompany the application.

280.9 Cost of survey borne by Government. In the event of approval of the application, the costs of the survey will be borne by the Government.

280.10 No preference right gained by filing of application for survey. Should the island or other land be surveyed as public land, no preference right to acquire the same under the laws governing the disposal of public lands will be gained by the filing of the application for survey.

(Sgd.) Roscoe E. Bell
Associate Director.

Approved: Nov 22 1948

(Sgd.) C. Girard Davidson

Assistant Secretary of the Interior.

1/ Section 80 of Title 18 of the United States Code makes it a crime for any person knowingly or willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement as to any matter within its jurisdiction.

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L-1

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UNITED STATES
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BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43-PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 102--AGRICULTURAL ENTRIES ON MINERAL LANDS

Part 102 is amended as follows:

A paragraph is added to section 102.8, as follows:

The act of April 30, 1912 (37 Stat. 105; 30 U.S.C. 90) authorizes the selection of unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, by the several states within whose limits the lands are situated, under grants made by Congress, and the offering at public sale, in the discretion of the Secretary of the Interior, of isolated or disconnected tracts of coal lands, which are so withdrawn, classified or valuable, with a reservation of the coal deposits to the United States and otherwise subject to all the conditions and limitations of the act of June 22, 1910. (R.S. 453, 2478; 43 U.S.C. 2, 1201)

Section 102.15 is amended to read as follows:

102.15 Prospecting for reserved coal deposits. As a condition precedent to the exercise of the right mentioned in the act of June 22, 1910, to prospect for coal on public land which has been entered or patented with a reservation of the coal deposits as provided by that act, the person desiring to so prospect must file a bond in the sum of $1,500, apply for and obtain a coal prospecting permit, and otherwise comply with the regulations relating to coal prospecting permits contained in part 193 of this chapter. (R.S. 453, 2478; 43 U.S.C. 2, 1201)

(Sgd) Marion Clawson

Director.

Approved: November 26, 1948

(Sgd) C. Girard Davidson

Assistant Secretary of the Interior.

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Circular No. 1708

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 281--RESURVEYS

Section 281.2 is revised to read as follows:

281.2 Purpose of Act. The real interest of the Government in the resurvey of the public lands is well stated in the said act of March 3, 1909, "to properly mark the boundaries of the public lands remaining undisposed of." Its duty being thus defined, the Bureau of Land Management will refrain from attempting to do more in the relocation of the corners of privately owned lands in a township being resurveyed than to reestablish such corners from the best available evidence of the original survey. (R.S. 453, 2478; 43 U.S.C. 2, 1201).

(Sgd) MARION CLAWSON

Director.

Approved: December 7, 1948

(Sgd) Mastin G. White

Acting Assistant Secretary of the Interior.

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L-1

48947

Circular No. 1710 — Obsolete

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See 1764

Ammendment to: 1647

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 257--LEASE OR SALE OF SMALL TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL, OR BUSINESS SITES

Part 257 containing the regulations governing leases and sales under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a), as amended, contained in Circular 1647, May 27, 1947, as amended by Circulars 1665 and 1691 of November 19, 1947, and August 6, 1948, respectively, is further amended as follows:

1. In paragraph (c) of section 257.2, the sentence which reads: "Where there is no Regional Administrator, it means the Director, Bureau of Land Management," is deleted and in paragraph (d) of that section the words "Regional Administrator" are substituted for the word "Director."

2. The last sentence in paragraph 2 of section 257.3 is amended by adding thereto the following: "and lands will not be leased or sold under the act if such action would unreasonably interfere with the use of water for grazing purposes or unduly impair the protection of watershed areas.

3. In the last sentence of section 257.4 the word "district" is deleted.

4. In section 257.5 the sentence which reads "The applicant must furnish all the information required by the form, including the declaration that he has personally examined the lands for which the application is filed" is deleted.

5. A note is added after section 257.8, as follows: "Note. For the effect of small tract classifications in connection with appropriations under laws other than the Small Tract Act, see 43 CFR 292.11."

6. In the fourth paragraph of section 257.10, the sentence which reads: "Any rental paid in advance for the lease period subsequent to the date that an application for sale is properly filed will be credited against the purchase price" is deleted.

7. In the first sentence of the last paragraph of section 257.11, the words "by the manager" are deleted.

8. In section 257.13, the words "modify or" are deleted.

9. In the second sentence of paragraph 2 of section 257.14, the word "predecessor" is substituted for the word "successor" and paragraphs 3 and 4 of that section are amended to read as follows;

"An application for sale should be made on Form 4-775a. When a sale is authorized, the applicant will be allowed 60 days from service of notice of such authorization to deposit the amount required. If the purchase price is $25, or less, the entire amount must be paid within such 60-day period. If the purchase price is more than $25 and not more than $50, at least $25 must be paid within the 60-day period and the balance must be paid within one year after the date of such payment. If the purchase price is more than $50, at least one-third of the purchase price, but not less than $25, must be paid within the 60-day period and the balance may be paid in two equal annual installments due respectively one and two years after the date of the first payment.

"Any advance rentals paid for the lease period subsequent to the date that the application for sale is properly filed will be credited against the purchase price, as follows: Credit will be allowed for each full one-quarter of a year for which advance rental waspaid but not for advance payment covering less than a full one-quarter of a year."
(52 Stat. 609; 43 U.S.C. 682a)

(Sgd) Marion Clawson
Director.

Approved: Dec. 10, 1948.

Sgd C. Girard Davidson
Assistant Secretary of the Interior.

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See Circ. 1828 for amendment to 78.8

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BUREAU OF LAND MANAGEMENT
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CODE OF FEDERAL REGULATIONS
TITLE 43—PUBLIC LANDS: INTERIOR
CHAPTER I—BUREAU OF LAND MANAGEMENT
SUBCHAPTER A—ALASKA

PART 78—SURVEYS

SURVEY OF PUBLIC LANDS
IN ALASKA.

Sec.

78.1 System of surveys.

78.2 Meridians.

78.3 Administration of surveying activities.

78.4 Existing surveys and extensions thereof

78.5 Special surveys.

78.6 Deposit required for survey made by deputy surveyor

78.7 Copy of plat of non-mineral survey for posting on land.

78.8 Plats of mineral surveys released upon approval. —

78.9 Copies of records.

AUTHORITY: Sections 78.1 to 78.9 issued under R.S. 453, 2478; 43 U.S.C. 2, 1201.

Part 78 is completely revised to read as follows:

SURVEY OF PUBLIC LANDS IN ALASKA

Section 78.1 System of surveys. The rectangular system of survey of the public lands was extended to the Territory of Alaska by the act of March 3, 1899 (30 Stat. 1098; 48 U.S.C. 351). The regular township surveys in Alaska conform to that system, but departures therefrom are permitted under the conditions stated in the act of April 13, 1926 (44 Stat. 243; 48 U.S.C. 379), and in certain other cases, such as special surveys for trade and manufacturing sites, headquarters sites, and homesites under section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 461), as amended; for soldiers additional entries, pursuant to sections 2306 and 2307 of the Revised Statutes (43 U.S.C. 274, 278); and for small tracts under the act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a) as amended.

78.2 Meridians. The public land surveys in Alaska are governed by three principal meridians established as follows: the Seward Meridian, initiated just north of Resurrection Bay and extending to the Matanuska coal fields; the Fairbanks Meridian, commencing near the town of Fairbanks and controlling the surveys in that vicinity, including the Nenana coal fields; and the Copper River Meridian which lies in the valley of the Copper River and from which surveys have been executed as far north as as the Tanana River and south to the Bering River coal fields and the Gulf of Alaska.

78.3 Administration of surveying activities. Administration of the public land surveying activities in Alaska is under the general supervision of the Regional Administrator, Bureau of Land Management, at Anchorage, Alaska. A public survey office, in which the records relating to the public land surveys in the Territory are maintained, is located at Juneau, Alaska. Correspondence relating to local survey matters should be addressed to the Public Survey Office, Juneau, Alaska.

78.4 Existing surveys and extensions thereof. The surveys up to the present time have been confined to known agricultural areas, the coal fields, and such other lands as have been considered to be suitable for development by settlers or otherwise. The extensions of the surveys to other areas will be governed largely by the character of the lands and their suitability for use, development, and administration under the public [illegible] laws applicable to Alaska.

78.5 Special surveys. Information respecting special surveys of soldiers' additional entries, homesites, homesteads, and trade and manufacturing sites is given in Parts 61, 64, 65, and 81, respectively.

78.6 Deposit required for survey made by deputy surveyor.

When application is made to have a special survey executed by a deputy surveyor, the Regional Cadastral Engineer, Public Survey Office, Juneau, Alaska, will furnish the applicant with an estimate of the cost of the office work involved in the preparation of the plat and field notes of such survey. The applicant will be required to deposit such estimated amount with said officer. If the estimated amount is found to be insufficient to cover the actual cost of such office work, the applicant will be required to pay the deficiency; if in excess of the actual cost, the excess will be refunded to the applicant.

78.7 Copy of plat of non-mineral survey for posting on land. The public survey office will furnish the claimant, without charge, a copy of the plat of a special non-mineral survey for posting on the land.

78.8 Plats of mineral surveys released upon approval. Upon approval of plats of Alaskan mineral surveys by the Office Cadastral Engineer, Public Survey Office, Juneau, Alaska, two copies thereof will be prepared in the public survey office by photostat, blueprint, or such other process as may be available. Such copies will be furnished without charge to the claimant, or his agent or attorney, for immediate use, one for posting on the land and one for filing with the application.

78.9 Copies of records. Copies of plats of surveys in Alaska, or other records of the Public Survey Office, will be sold at the cost of production, in accordance with section 1 of the act of August 24, 1912 (37 Stat. 497; 5 U.S.C. 488), as amended by the act of July 30, 1947 (61 Stat. 521), and 43 CFR 240.4.

(SGD) Marion Clawson,
Director.

Approved: December 14, 1948.

C. Girard Davidson,
Assistant Secretary of the Interior.

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5/26/54 BB.

Absolete 10/17/57

Circular No. 1712

UNITED STATES
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BUREAU OF LAND MANAGEMENT
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CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 101--GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

Section 101.19, providing that the originals and copies of all applications to enter or select public lands outside of Alaska under the nonmineral public land laws shall be transmitted by the managers of the district land offices to the Bureau of Land Management for preliminary consideration, is hereby revoked. (R.S. 453, 2478, 43 U.S.C. 2, 1201)

(Sgd.) Marion Clawson,
Director.

Approved: Dec. 21, 1948

(Sgd.) C. Girard Davidson,
Assistant Secretary of the Interior.

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Obsolete
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Circular No. 1713

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CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 137--CITIZENSHIP IN PUBLIC LAND CASES

Section 137.2 is amended by deleting from the last sentence thereof the following: "leaving it to the General Land Office to secure verification of the citizenship status at the proper time."

(R.S. 453, 2478; 43 U.S.C. 2, 1201)

(Sgd.) Roscoe E. Bell,
Associate Director.

Approved: Dec. 21, 1948

(Sgd.) C. Girard Davidson,
Assistant Secretary of the Interior.

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CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 164--UNLAWFUL ENCLOSURES

Part 164 of Title 43 relating to unlawful enclosures of public lands in grazing districts is deleted from Chapter I of Title 43.[1]

(48 Stat. 1271; 43 U.S.C. 315c)

(Sgd.) Marion Clawson

Director.

Approved: December 28, 1948

(Sgd.) C. Girard Davidson

Assistant Secretary of the Interior.

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[1] For regulations governing the unlawful enclosure or occupancy of the public lands, see Part 289 of this chapter.

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Circular No. 1715

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BUREAU OF LAND MANAGEMENT
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CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 240--PUBLIC LAND RECORDS

The footnote to the title of Part 240 is deleted, and the first paragraph of section 240.3 is amended to read as follows:

240.3 Filing of township plats. After acceptance of a survey, the original plat thereof will be returned to the public survey office, the duplicate plat will be retained in the files of the Bureau of Land Management in Washington, D. C., and the triplicate plat will be forwarded to the appropriate district land office. The plat will be placed of record in the open files of the respective offices immediately upon receipt thereof and will then be available to the public as a matter of information only with respect to the technical data and descriptions appearing thereon; copies of such plat and the related field notes will be furnished upon request and payment of the costs as provided in section 240.4. When the manager of the district land office is instructed to file the plat without the usual public notice, such plat will be regarded as officially filed in his office on the date of receipt thereof and immediate report of such date will be made to the Director.

(R.S. 453, 2478; 43 U.S.C. 2, 1201)

(Sgd.) Marion Clawson

Director.

50298

Approved: December 23, 1948.
(Sgd.) C. Girard Davidson
Assistant Secretary of the Interior.

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CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

SUBCHAPTER B--APPLICATIONS AND ENTRIES

PART 101--GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES.

Section 101.20 is amended to read as follows:

APPLICATIONS FOR LANDS CONTAINING RANGE OR OTHER IMPROVEMENTS

Section 101.20 Action on Applications. When an application under the public land laws for lands upon which range or other improvements have been placed by the United States, or pursuant to an agreement with it, is filed in a district land office or other authorized office of the Bureau of Land Management, it should be referred to the appropriate official for determination as to whether it may be allowed, notwithstanding such improvements, and if so, with or without a reservation. No right is acquired to such lands merely by the filing of an application, since any part of a legal subdivision thus improved is considered appropriated within the meaning of section 7, 8, and 14 of the Taylor Grazing Act. See 84 F. 2d, 232 and 44 L.D. 359, 513. .

(R.S. 453, 2478; 43 U.S.C. 2, 1201).

(Sgd.) Marion Clawson

Director.

Approved: December 28, 1948

(Sgd.) C. Girard Davidson

Assistant Secretary of the Interior.

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Superseded
See Circ. 1809

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 295--WITHDRAWALS AND RESTORATIONS

OPENINGS AND RESTORATIONS

295.8 Processing of simultaneous applications. All applications filed pursuant to the regulations in any part of this chapter will be regarded as having been filed simultaneously within the meaning of this section where by reason of an order of restoration or opening, or a notice of the filing of a plat of survey or resurvey, they are filed in the manner and within the period of time provided for in such order or notice. Where no order of restoration or notice of opening is involved, the applications will be treated as having been filed simultaneously where they are received by a district land office (or, if there is no such office in the State, by the Bureau of Land Management), over the counter at the same time, or are received in the same mail. Applications which are filed simultaneously will be processed in accordance with the following rules:

(a) All such applications received will be examined and appropriate action will be taken on these which do not conflict in whole or in part.

(b) All such applications which conflict in whole or in part will be included in a drawing which, except as provided in this paragraph, will fix the order in which the applications will be processed. For the purpose of the drawing, the manager will write on cards the names of the several applicants and each of these cards will be placed in an envelope upon which there is no distinguishing or identifying mark, and at

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2:00 p.m. on the date of the restoration or opening, if practicable, otherwise at such other time as may be fixed by the manager, with reasonable notice to the applicants, all the envelopes containing the names of the applicants will be thoroughly mixed in the presence of such persons as may desire to be present. Where no order of restoration or notice of opening is involved, a drawing for any simultaneous applications, except as provided in paragraph (c), will be held at such time after the applications are filed as may be fixed by the manager. The envelopes containing the cards prepared as stated will be drawn and opened and the cards therein will be numbered in order. The cards, as numbered, will be fastened securely to the applications of the respective persons and, subject to any priority to which any particular applicant may be entitled on account of a preference right conferred by law or regulations, the numbers will fix and determine the order of priority for action on the applications.

(c) No drawing shall be held in connection with simultaneous applications which conflict with applications entitled to priority because of prior filing, unless and until appropriate action on the prior applications has been taken and a drawing for the subsequent simultaneously filed applications is found to be necessary. The applicants will be given reasonable notice of any such drawing.

(d) Where an applicant fails to obtain all of the land applied for, he will be permitted to elect whether he will retain the lands secured and amend his application to embrace other lands not affected by pending applications and otherwise subject to appropriation, or withdraw his original application. Applications conflicting in whole or in part with those previously allowed will be rejected.

(R.S. 453, 24781 43 U.S.C. 2, 1201)

(Sgd.) Marion Clawson
Director.

Approved: December 28, 1948
(Sgd.) C. Girard Davidson
Assistant Secretary of the Interior.

Circular No. 1718

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 296--CLASSIFICATIONS

CLASSIFICATIONS OF PUBLIC LANDS UNDER SECTION 7 OF THE TAYLOR GRAZING ACT OR UNDER THE SMALL TRACT ACT

Sec.
296.1 Statutory authority.
296.2 Classification of public lands.
296.3 Notice of proposed classification and opening to be given to grazing permittee; classification and opening of land in a grazing lease.
296.4 Classifications of irrigable land for homestead entry.
296.5 When applicant may occupy and improve the land.
296.6 Preference-right of applicant; order of opening to be issued where preference-right application is rejected.
296.7 Requirements to earn title.
296.8 Cases of conflict with applications for mineral propsecting permits or leases.
296.9 Appeal.

AUTHORITY: Secs. 296.1 to 296.9, inclusive, issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Part 296 of 43 CFR is revised to read as follows:

CLASSIFICATION OF PUBLIC LANDS UNDER SECTION 7 OF THE TAYLOR GRAZING ACT OR UNDER THE SMALL TRACT ACT

296.1 Statutory authority. Section 7 of the act of June 28, 1934 (48 Stat. 1272), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify any lands withdrawn or reserved by Executive order 6910 of November 26, 1934 or Executive order 6964 of February 5, 1935, and amendments thereto, or within a grazing district, which are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than the use provided for under said act, or proper for acquisition in satisfaction of any outstanding lieu, exchange, or scrip rights or land grant, and to open such lands to entry, selection, or location for disposal in accordance with such classification under applicable land laws. Executive order 6910, Executive order 6964 and section 7 of the Taylor Grazing Act, do not apply to public lands in the Territory of Alaska.

The small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended, authorizes the classification for small tract purposes, as set forth in Part 257 of this chapter, of any vacant, unreserved. surveyed public land, or surveyed public land withdrawn or reserved by the Secretary of the Interior for any purpose, or surveyed lands withdrawn by Executive Order Nos. 6910 of November 26, 1934, and 6964 of February 5, 1935. The act, as amended, applies to the Territory of Alaska.

296.2 Classification of public lands. Classification may be made of the lands without an application having been filed for such lands.

Where classification is required under section 7 of the Taylor Grazing Act, an application to enter, select or lease the land will be considered as a petition for its classification. Where, however, the land or any part thereof, is withdrawn or classified or is valuable for deposits of coal, oil, gas, potash, phosphate, sodium, oil shale or (in Louisiana and New Mexico) sulphur, the applicant must show:

(a) Whether the purpose for which the title is sought is necessary and not contrary to the interest of the public;

(b) Whether the applicant lawfully could devote the land to the proposed use without obtaining title; and

(c) Whether the applicant reasonably could obtain other land, either public or privately owned, which could serve the purpose desired substantially as well as the land applied for.

296.3 Notice of proposed classification and opening to be given to grazing permittee: classification and opening of land in a grazing lease. In the case of public lands in a grazing district, reasonable notice of a classification or a proposed classification and opening of the lands will be given to any permittee entitled to participate in the grazing use of the land. Lands embraced in a grazing lease are subject to classification and other lease or disposal under the conditions set forth in 43 CFR 160.12.

296.4 Classifications of irrigable land for homestead entry. Public lands which are desert in character within the meaning of sections 2 and 3 of the desert-land law (act of March 3, 1877, 19 Stat. 377, 43 U.S.C. 322) and are subject to classification under section 7 of the Taylor Grazing Act may, on the filing of an application under the general homestead laws, be classified for entry under those laws, provided the applicant makes a satisfactory showing that the land is susceptible of successful cultivation by irrigation and that the cultivation requirements of the homestead laws will be met. The applicant in such a case will be required to furnish satisfactory evidence of a water right and plans of irrigation. The available water supply, and the plan of irrigation, however, need be sufficient only to enable the applicant to meet the cultivation requirements of the homestead laws.

296.5 When applicant may occupy and improve the land. The filing of an application which cannot be allowed unless the land is first classified does not give the applicant the right to occupy or settle upon the land. The applicant shall be entitled to the possession and use of the land only after his entry, selection or location has been allowed, or a lease has been issued. Settlement on the land prior to that time constitutes a trespass.

296.6 Preference-right of applicant; order of opening to be issued where preference-right application is rejected. Where public land is classified under section 7 of the Taylor Grazing Act pursuant to an application, the applicant is entitled to a preference-right of entry. If, however, after classification of the land and prior to the allowance of the application, it should be necessary for any reason to reject the application, the land will not become subject to application by persons other than the preference-right applicant until an appropriate order of opening has been issued. Cross Reference: For preference-right of applicant under the Small Tract Act, see section 257.9 of this chapter.

296.7 Requirements to earn title. Upon allowance of an application to make entry, location or selection of public land classified as provided in sections 296.1-296.9, all the laws and regulations governing the particular kind of entry, location or selection applied for must be complied with in order to earn title to the land.

296.8 Cases of conflict with applications for mineral prospecting permits or leases. In all cases of applications to make nonmineral entries or selections of public lands, which conflict with applications for mineral prospecting permits or leases, the instructions in sections 102.34-102.38 must be observed.

296.9 Appeal. An appeal from a decision of the manager to the Director, or from a decision of the Director to the Secretary of the Interior may allege errors of law, or the applicant may make a showing as to the facts, accompanied by evidence tending to disprove the adverse conclusions reached.

REGULATIONS SUPERSEDED

The sections 296.1 to 296.9, inclusive, contained in this Circular, supersede sections 296.1 to 296.14, inclusive, of title 43, as amended (Cum. Supp.).

(Signed) Marion Clawson,
Director.

Approved: Dec. 28, 1948
(Signed) C. Girard Davidson
Assistant Secretary of the Interior.

Circular No. 1721

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 289--UNLAWFUL ENCLOSURES OR OCCUPANCY

Section 289.4 is amended to read as follows:

289.4 Filing of charges or complaints. All charges or complaints against unlawful enclosures or obstructions upon the public lands should be filed with the proper regional administrator. Such charges or complaints, when possible, should give the name and address of the party or parties making or maintaining such enclosure or obstruction and should describe the land enclosed in such a way that it may be readily identified. The section, township, and range numbers should be given, if possible.

Sections 289.5 to 289.11, inclusive, and sections 289.13 to 289.15, inclusive, are deleted from Title 43.

Footnote 7 to section 289.1 is amended by adding thereto the following: "Violations of any of the provisions of the act of February 25, 1885, constitute a misdemeanor (Sec. 4, 23 Stat. 322; 35 Stat. 40; 43 U.S.C. 1064)."

(Sgd.) MARION CLAWSON

Director

Approved: January 10, 1949

(Sgd) J. A. Krug

Secretary of the Interior

Circular No. 1719

Obsolete

Replaced by 1840

See 1719
Amend no. 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--BUREAU OF LAND MANAGEMENT

CHAPTER I--BUREAU OF LAND MANAGEMENT

Part 192--OIL AND GAS LEASES

Section 192.1 is revised to read as follows:

192.1 Applicability of amendatory act to existing leases. Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U. S. C. 181) applies to leases issued prior to the date of that act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

Section 192.3 is amended by inserting "192.42(a)(2) and (a)(s)" in lieu of "192.42(b) and (c)" in the last paragraph.

Section 192.40a is revised to read as follows:

192.40a. Dating of competitive and noncompetitive oil and gas leases. All competitive and noncompetitive oil and gas leases. excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

Section 192.42 is revised to read as follows:

192.42 Applications for noncompetitive leases. Applications for noncompetitive leases may be filed in the proper district land office, or, for lands or deposits in States in which there is no district land office, in the Bureau of Land Management, addressed to the Director of the Bureau of Land Management, Washington, D. C. All applications must be filed in duplicate and must be accompanied by the filing fee prescribed in Sec. 191.11 of this chapter, and at least one-half of the first year's rental. After March 1, 1949, each application must be accompanied by the full rental payment for the first year. Any application not accompanied by the required fee and rental payment will be rejected. No specific form of application is required and no blanks will be furnished. An application executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. A lease executed by an attorney in fact in behalf of the applicant must be accompanied by evidence of the attorney's authority to execute the lease. Proof of the authority of the officer who makes application in behalf of a corporation must be furnished. An application by a minor will be rejected.

(a) The application must contain in substance the following:

(1) The applicant's name and address.

(2) A statement as to citizenship; in case of an individual whether native born or naturalized and, if naturalized, date of naturalization, court in which naturalized, and number of certificate, if known; if a woman, whether she is married or single, if married, the date of her marriage and the citizenship of her husband; if a corporation, by certified copy of the articles of incorporation and a statement of its duly authorized officer listing the names of all stockholders known to

be non-citizens, or whose addresses are not within the United States, its territories or possessions, giving the amount of stock held by each; if 20 percent or more of the stock of any class if owned or controlled by any stockholder, a separate showing of his citizenship and holdings.

(3) A statement of the interests, direct or indirect, held by the applicant in oil and gas leases issued under the act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181) as amended, and applications for such leases, covering lands in the same State, identifying by serial number the records wherein such interests may be found, together with a statement that such interests, with the acreage applied for, do not exceed in the aggregate 15,360 acres in the State.

(4) Description of the lands for which a lease is desired, describing the lands by legal subdivisions or, if unsurveyed, by metes and bounds description connected with a corner of the public surveys by courses and distances, and where possible, a description of the land by approximate legal subdivisions of the future survey. Each application shall be for one lease only, which may not exceed 2560 acres except where the rule of approximation applies.

(5) A statement that the applicant is ready upon demand to furnish such bond or bonds as may be required under the lease or regulations.

Where any required information or statements are already on file with the Department, the showing required by these regulations may to that extent be made by approximate reference to the information or statements already on file.

(b) If an applicant dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not contemplated, to the heirs or devisees, provided that there is filed:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator signs the lease forms, and bond form if a bond is required, has authority to act in that capacity and to sign the lease and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required under (a)(2) and (a)(3) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased applicant and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are contemplated:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under (a)(2) and (a)(3) of this section.

Section 192.43 is completely revised so as to read:

Sec. 192.43. Opening of lands to further filings, where a noncompetitive oil and gas lease is cancelled or relinquished. Where a noncompetitive lease is cancelled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancellation or relinquishment on the tract book of the district office or on the tract book of the Bureau of Land Management if there is no district office in the State, the lands shall be open to further oil and gas leasing. Applications received in the same mail or over the counter at the same time, will be considered simultaneously filed and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the procedure prescribed by section 295.8.

Section 192.52 is amended by inserting "192.42(a)(2)" and "192.42(a)(3)" in lieu of "192.42(b)" and "192.42(c)", respectively.

The first paragraph of section 192.53 is amended by adding thereto the following:

> If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

The third paragraph of section 192.100 is amended by adding thereto the following:

> An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

Section 192.140 is amended by inserting the following sentence immediately preceding the last one in the section:

> A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved.

The following text is substituted for the first paragraph of section 192.141:

192.141. Requirements for filing of operating agreements, assignments or transfers. All instruments of transfer of a lease or of an interest therein, including assignments of record title, working, or royalty interests, operating agreements and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with evidence of the qualifications of the operator, assignee or transferee, consisting of the same showing required of a lease applicant by section 192.42(a)(2) and (a)(3). An application for approval of any such instrument except those concerning royalty interests, must be accompanied after March 1, 1949 by a fee of $10.00 and an application thereafter, not accompanied by a certified check, money order or cash of that amount, will be rejected by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application.

If a bond is necessary, it must be furnished. Where an assignment does not create separate leases, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement, must be submitted describing them. Assignments or record title interests must be filed in triplicate. A single executed copy of all other instruments of transfer, or of an operating agreement, is sufficient.

In order for the heirs or devisees of a deceased holder of a lease, an operating agreement or a royalty interest in a producing lease to be recognized by the Department as the holder of the lease, agreement, or interest, theremust be furnished the appropriate showing required under section 192.42(b).

(Sgd.) Marion Clawson

Director.

Approved: December 29, 1948

(Sgd) C. Girard Davidson

Assistant Secretary of the Interior.

Office Copy
Not to be taken from office

Obsolete

Replaced by 1840

Circular No. 1719, Amendment No. 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--BUREAU OF LAND MANAGEMENT

CHAPTER I--BUREAU OF LAND MANAGEMENT

Part 192--OIL AND GAS LEASES

In the second sentence of the first paragraph of Sec. 192.141 the words "payment of such fee" are substituted for the words "a certified check, money order or cash of that amount."

(Sec. 32, 41 Stat. 450; 30 U.S.C. 189)

(Signed) Roscoe E. Bell
Associate Director.

Approved: Feb. 28, 1949.
(Signed) Martin G. White,
Acting Assistant Secretary of the Interior.

Office Copy

Replaced by No. 1850

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1720]

PART 181—PUBLIC LAND RIGHTS OF SOLDIERS AND SAILORS

The following text is substituted for §§ 181.36 to 181.41, inclusive (Circulars 1588, 1609 and 1635, of December 7, 1944, November 16, 1945 and February 11, 1947):

PUBLIC LAND RIGHTS OF VETERANS OF WORLD WAR II, AND OF OTHER PERSONS ENTITLED TO CREDIT FOR SERVICE OF SUCH VETERANS

Sec.
181.35 Statutory authority.
181.36 Credit for military or naval service in connection with homestead entries and homesites in Alaska; computation of service.
181.37 Evidence required of military or naval service.
181.38 Homesites in Alaska under act of May 26, 1934.
181.39 Residence and cultivation required on homesteads.
181.40 Credit for service of spouse of homestead entryman or entrywoman.
181.41 Homestead entry by surviving spouse, or minor orphan children, of a deceased veteran; evidence required.
181.42 Rights of minor children, or widow, or heirs or devisees of deceased veteran.
181.43 Rights of minor veteran under the homestead laws.
181.44 Preference right of application on restoration or opening of surveyed public lands; preference right of settlement on restoration or opening of unsurveyed public lands in Alaska.
181.45 Cases in which preference right provisions apply.
181.46 Cases in which preference right provisions do not apply.
181.47 Preference right accorded to veterans in connection with certain reclamation lands.

AUTHORITY: §§ 181.35 to 181.47 issued under 58 Stat. 748, 62 Stat. 305, 45 Stat. 1063, 60 Stat. 36; 43 U. S. C. 284, 617h.

PUBLIC LAND RIGHTS OF VETERANS OF WORLD WAR II AND OF OTHER PERSONS ENTITLED TO CREDIT FOR SERVICE OF SUCH VETERANS

§ 181.35 *Statutory authority.* The act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279–284), as amended, grants to veterans of World War II, certain benefits in connection with the public lands, in addition to those conferred by the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178, 1186; 50 U. S. C. App. 560–572), as amended, and the regulations thereunder, contained in §§ 181.20 to 181.34.

The benefits conferred by the act of 1940 in connection with the public lands relate for the most part to rights initiated or acquired under the public land laws prior to the entrance of the claimant into the military or naval service. The benefits granted by the act of 1944, as amended, are set forth in §§ 181.35 to 181.46.

§ 181.36 *Credit for military or naval service in connection with homestead entries and homesites in Alaska; computation of service.* (a) Any person who has served in the military or naval forces of the United States for a period of at least ninety days between September 16, 1940 and the termination of World War II [1] and is honorably discharged from the military or naval forces, and who subsequent to such discharge makes entry under the general homestead laws is entitled to have the period of such service, not exceeding two years, construed to be equivalent to residence and cultivation upon the land for the same length of time. Where application is made under the Alaska homesite act of May 26, 1934 (48 Stat. 869; 48 U. S. C. 461), the veteran is not required to cultivate the land and he may claim credit on the period of residence required by that act for the period of the military or naval service in like manner as is provided in the case of homestead entries. Any person who has served in the military or naval forces of the United States between September 16, 1940, and the termination of World War II will similarly be entitled to credit for two years' service without regard to the actual length of such service, (1) if such person is discharged on account of wounds received or disability incurred between those dates in the line of duty, or (2) if such person is regularly discharged and subsequently is furnished hospitalization or is awarded compensation by the Government on account of such wounds or disability.

(b) In computing the period of such service, the entrance of the veteran into the service will be considered as dating from the time of commencing active duty with the armed forces of the United States. Service with State troops or in the National Guard prior to the mustering of such troops into the service of the United States will not be included.

(c) An honorable discharge within the meaning of the act of September 27, 1944 as amended shall mean: (1) Separation from the service by means of an honorable discharge, or by the acceptance of resignation or a discharge under honorable conditions; or (2) release from active duty under honorable conditions to an inactive status whether or not in a reserve component, or retirement. Any person who obtains an honorable discharge as herein defined shall be entitled to the benefits of the act of September 27, 1944, even though such person thereafter resumes active military duty.

§ 181.37 *Evidence required of military or naval service.* A person claiming the benefit of military or naval service must file with his application, if a preference right of entry is claimed, and with his final proof, if the entry or Alaska homesite claim is not based on a preference right application, a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his respective branch of the service which shows clearly an honorable discharge as defined in § 181.36, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service.[2]

§ 181.38 *Homesites in Alaska under act of May 26, 1934.* While a veteran who establishes a homesite claim in Alaska under the act of May 26, 1934 (48 Stat. 869; 48 U. S. C. 461) is not required to cultivate the land, he must as a basis for purchase, reside upon the land in a habitable house for the periods specified in § 181.39. Credit may be allowed for military or naval service in connection with these claims as set forth in §§ 181.40 to 181.43, relating to such credit in the case of homestead entries. In order to secure a preference right of application upon the opening or restoration of surveyed public land in Alaska, the veteran must file an application in accordance with § 64.7a of this chapter.

§ 181.39 *Residence and cultivation required on homesteads.* Before satisfactory final proof may be submitted on a homestead entry, a veteran will be required to comply with the homestead laws for a period of at least one year and for such additional period as, added to the term of the military or naval service, equals three years. During this period a veteran with 19 months or more military service will be required to reside on the land at least seven months during the first entry year; with more than 12 and less than 19 months, he must reside on the land seven months during the first entry year and such part of the second year, as added to his excess over 12 months' service, will equal seven months, and must cultivate one-sixteenth of the area the second year; with seven and not more than 12 months, he must reside upon the land seven months during each of the first and second entry years, and cultivate one-sixteenth of the area the second year; with 90 days and less than seven months, he must reside upon the land seven months during each year for the first and second years, and

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[1] The termination of World War II had not yet occurred as of the date of the issuance of these regulations.

[2] Section 35 (a) of the Criminal Code (18 U. S. C. 80), makes it a crime for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement as to any matter within its jurisdiction.

Published in Federal Register, Volume 13
Number 255, of December 31, 1948

such part of the third as, added to his service, will equal seven months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation. A veteran will not be required to cultivate the land after he has met the requirements as set forth above, provided he promptly files notice of intention to submit proof. If, however, he delays the submission of proof beyond the period for which residence is required, the cultivation necessary during each annual cultivable season elapsing or reached before the submission of proof must be shown. He may apply for and receive a reduction in the area required to be cultivated, the same as other entrymen. In computing the required periods of residence, set forth above, there has been excluded the five months' absence each year from the land which may be taken by a homestead entryman in not more than two periods during each year after establishing residence, by giving notice to the manager as set forth in § 166.38 of this chapter. The veteran must have a habitable house on the land at the date of submitting homestead proof.

§ 181.40 *Credit for service of spouse of homestead entryman or entrywoman.* When the homestead entry is made by a husband or wife whose spouse is entitled to service credit under this part, such credit will, with the written consent of the spouse entitled thereto, be available to the husband or wife making the entry, in addition to any service credit to which he or she individually may be entitled. The total period for which service may be allowed may not, however, exceed two years.

§ 181.41 *Homestead entry by surviving spouse, or minor orphan children, of a deceased veteran; evidence required.* (a) The surviving spouse or the minor children of any person who dies as the result of wounds received or disability incurred in line of duty while serving in the military or naval forces of the United States from September 16, 1940 to the termination of World War II, shall be entitled to credit for two years' residence and cultivation on a homestead entry. The surviving spouse or the minor children of any person who dies after performing service that would be a basis for credit under the provisions of § 181.36 shall be entitled to the amount of credit which would have been allowable to such person. The credit provided by this section shall be available to the surviving spouse, or, in the case of the death or marriage of the surviving spouse, to the minor child or children, upon application therefor by a guardian duly appointed and officially credited at the Department of the Interior. If both spouses have performed service for which credit is given, the surviving spouse, or, in the case of the death of both spouses, the minor children, may utilize the combined credit of both spouses. An entry made by such surviving spouse or guardian shall be subject to the requirement of residence and other compliance with the provisions of the homestead laws for the period for which credit cannot be claimed.

(b) in the case of a spouse of a deceased veteran, the prescribed evidence of military service of the veteran must be furnished together with a statement showing (1) the facts as to any homestead entry made by him, (2) the date of the veteran's death, and (3) that the spouse has not remarried.[3]

Where a homestead entry is made in behalf of the minor child, or children, of a veteran, in addition to the prescribed evidence of military service of the veteran, satisfactory evidence must be furnished showing (1) the facts as to any homestead entry made by the veteran, (2) the death of the veteran and the death or remarriage of the other parent, and (3) the name, address, and age of each such minor. Evidence of death may be the testimony of two witnesses or a physician's certificate, duly attested. Evidence of marriage may be a certified copy of the marriage certificate or the record of same, or testimony of two witnesses to the marriage ceremony.

§ 181.42 *Rights of minor orphan children, or widow, or heirs or devisees of deceased veteran.* Upon the death of a veteran entitled to claim credit for military or naval service as set forth in § 181.36, his rights under a homestead entry pass, if there is no widow, to his minor orphan child, or minor orphan children, if any. Patent under the entry will issue to such minor or minors, upon proof of such facts, without any proof of compliance with the law in the matter of residence, cultivation or improvements.

Upon the death of such a veteran, his rights under a homesite claim in Alaska, established under authority of the act of May 26, 1934 pass to his minor orphan child, or minor orphan children, if any. Patent under the claim will issue to them, upon proof of such facts, without any proof of compliance with the law in the matter of residence or improvements.

Where the widow, heirs or devisees of a homestead entryman succeed to his rights under his entry, she or they, are not required to reside upon the land, but, in order to submit satisfactory proof, must continue cultivation for such period as, added to the term of the military or naval service, meets the requirements as to cultivation, as set forth in § 181.39. The widow, heirs or devisees must also show that she, or they, are citizens of the United States, that the entryman complied with the Law in all respects to the date of his death, and that there is a habitable house on the land.

Where the heirs or devisees of a homesite claimant, in Alaska, succeed to his rights under his claim, they must, in order to perfect the claim by purchase under §§ 64.6 to 64.10 of this chapter, continue residence upon the land in a habitable house for such period as, added to the term of the military or naval service, meets the requirements as to residence, as set forth in § 181.39. In addition, they must show that they are citizens of the United States.

§ 181.43 *Rights of minor veteran under the homestead laws.* A person who has served or may serve in the military or naval forces of the United States for a period of at least 90 days between September 16, 1940 and the termination of World War II, has received an honorable discharge, as defined in § 181.36, and who is under 21 years of age, is entitled to the benefits, rights and privileges, with respect to homestead entries and applications, conferred by the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. Sup. 279–284), as amended, and the regulations contained in §§ 181.35 to 181.46.

§ 181.44 *Preference right of application on restoration or opening of surveyed public lands; preference right of settlement on restoration or opening of unsurveyed public lands in Alaska.* From September 27, 1944 to September 26, 1954, inclusive, upon revocation of any order of withdrawal of surveyed public lands or the filing of a plat of survey or resurvery opening lands to application or entry, the order or notice taking such action will afford all persons of the classes entitled to credit under the provisions of §§ 181.35 to 181.45, a preferred right for a period of not less than ninety days, of application under the homestead or desert land laws, the Small Tract Act of June 1, 1938 (52 Stat. 609) as amended (59 Stat. 467; 43 U. S. C. sec. 682a), or the Alaska homesite act of May 26, 1934 (48 Stat. 809; 48 U. S. C. 461), subject to the requirements of applicable law.

During the above-mentioned period, on the revocation of any order of withdrawal of unsurveyed public lands in Alaska, persons entitled to the preference-right provisions mentioned above, will have a preference for a ninety day period before the lands are opened to settlement by the general public, to settle on such lands under the homestead laws and to make homesite settlement on such lands under the act of May 26, 1934.

§ 181.45 *Cases in which preference right provisions apply.* The preference right provisions extend, subject to the exceptions stated in the next section, to all cases where the lands are withdrawn or withheld from application under the public land laws, and by an order are opened or restored to such application. Thus, the preference right provisions apply (a) where lands not subject to application become subject thereto by reason of the filing of township plats of survey or resurvey, (b) where lands are restored from an order of withdrawal or reservation, (c) for small tract application only, where lands not classified for entry under the Small Tract Act of June 1, 1938, cited above, are so classified by the Secretary of the Interior on his own motion, (d) where lands are restored from segregation under the Carey Act, (e) where lands patented to a State under the Carey Act are reconveyed to the United States by the State, (f) where lands are reconveyed to the United States as a result of court proceedings or a demand for reconveyance, (g) where lands are conveyed to the United States by a State or a private owner in an exchange of lands, except where the acquired lands are situated in a national forest, a national park or an Indian reservation, or in any other reservation which precludes the filing of an application therefor under the public land laws, (h) where lands in national forests are opened under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), and (i) where Indian or other lands withheld from application are opened thereto.

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[3] Section 35 (a) of the Criminal Code (18 U. S. C. 80), makes it a crime for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement as to any matter within its jurisdiction.

§ 181.46 *Cases in which preference right provisions do not apply.* The preference right provisions do not apply where (a) lands were open to application on September 27, 1944, and they continue to occupy the same status, (b) lands are embraced in an entry which is canceled by contest, or by reason of the expiration of the statutory period, (c) lands are embraced in an entry or selection and under the law the lands become subject to application upon the filing of a relinquishment of the entry or selection in the land office, except lands in entries made under the act during the preference right period, which are relinquished before the expiration of the period, as to which excepted lands application may be made only by veterans during such period, (d) a revocation of an order of withdrawal is made in order to assist in a Federal land program other than one authorized by the homestead or desert land laws or by the Small Tract Act of June 1, 1938, as amended, (e) lands are subject to prior existing valid settlement rights or preference rights conferred by existing laws or equitable claims subject to allowance and confirmation and (f) the lands are eliminated from national forests and are covered by the claims of holders of permits issued by the Department of Agriculture whose permits have been terminated only because of such elimination and who own valuable improvements on such lands (act of June 3, 1948, Public Law 596—80th Cong., 62 Stat. 305).

§ 181.47 *Preference right accorded to veterans in connection with certain reclamation lands.* Under the terms of section 9 of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1063), as amended by the act of March 6, 1946 (60 Stat. 36, 43 U. S. C. 617h), all persons who served in the Army, Navy, Marine Corps, or Coast Guard during World War II, the War with Germany, the War with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the regular Army or Naval Reserve, will have a preference right for a period of three months to enter lands reclaimed by irrigation and reclamation under that act, subject to such qualifications as to industry, experience, character, and capital, as are deemed necessary to give reasonable assurance of success by the prospective settler. Such exclusive preference right is also given by the act cited to veteran settlers on lands watered from the Gila Canal in Arizona and on lands watered from the All-American Canal in California.

MARION CLAWSON,
Director.

Approved: December 30, 1948.

C. GIRARD DAVIDSON,
Assistant Secretary of the Interior.

[F. R. Doc. 48-11551; Filed, Dec. 30, 1948; 4:15 p. m.]

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Circular No. 1721

Still in effect
5/28/54

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

See F.R. 12/23/54.

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 289--UNLAWFUL ENCLOSURES OR OCCUPANCY

Section 289.4 is amended to read as follows:

289.4 Filing of charges or complaints. All charges or complaints against unlawful enclosures or obstructions upon the public lands should be filed with the proper regional administrator. Such charges or complaints, when possible, should give the name and address of the party or parties making or maintaining such enclosure or obstruction and should describe the land enclosed in such a way that it may be readily identified. The section, township, and range numbers should be given, if possible.

Sections 289.5 to 289.11, inclusive, and sections 289.13 to 289.15, inclusive, are deleted from Title 43.

Footnote 7 to section 289.1 is amended by adding thereto the following: "Violations of any of the provisions of the act of February 25, 1885, constitute a misdemeanor (Sec. 4, 23 Stat. 322; 35 Stat. 40; 43 U.S.C. 1064)."

(Sgd.) MARION CLAWSON

Director.

Approved: January 10, 1949

(Sgd) J. A. Krug

Secretary of the Interior

Distribution
L-1

Circular No. 1722

Obsolete

Replaced by No. 1738

See 1722 Amend. no 1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 196--PHOSPHATE LEASES AND USE PERMITS

This part is hereby completely revised as follows:

PHOSPHATE LEASES

Sec.

196.1 Statutory authority.
196.2 Size of leasehold and limitation of acreage holdings.
196.3 Qualifications of applicants.
196.4 Minimum expenditure and lease bond.
196.5 Minimum production.
196.6 Lessee's petition for change in minimum production.
196.7 Application for lease.
196.8 Noncompetitive application; publication; protests.
196.9 Issuance of noncompetitive lease.
196.10 Offer of lands or deposits for lease by competitive bidding.
196.11 Notice of lease offer.

Sec.

196.12 Action by successful bidder.
196.13 Assignments of leases; subleases.
196.14 Readjustment of terms and conditions at end of twenty-year period.
196.15 Relinquishment of lease.
196.16 Cancellation of lease.
196.17 Use of silica, limestone or other rock.
196.18 Use permits for additional lands.
196.19 Claims initiated prior to February 25, 1920.
Effective date.

AUTHORITY: Sections 196.1 to 196.19 inclusive, issued under sections 9-12 and 32, 41 Stat. 440, 441, 450; 30 U.S.C. 211-214 and 189.

PHOSPHATE LEASES

Section 196.1 Statutory authority. Sections 9 to 12, inclusive, of the Act approved February 25, 1920 (41 Stat. 440; 441; 30 U.S.C. 211-214), as amended, authorizes the Secretary of the Interior to lease any phosphate deposits of the United States and lands belonging to the United States containing deposits of phosphates and associated or related minerals, hereinafter called "leased deposits." Invitation to bid for such leases will be made in accordance with the procedure hereinafter set forth. Leases will be issued on Form 4-1110 for periods of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each 20 year period such reasonal readjustment may be made of the terms and conditions thereof as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods.

196.2 Size of leasehold and limitation of acreage holdings. Leases may embrace not exceeding 2,560 acres reasonably compact in form. Each lease shall describe the lands involved by legal subdivisions of the public land surveys. No person, association or corporation, may hold at any one time more than 5,120 acres in any one State, or more than 10,240 acres in the United States, whether directly through the ownership of phosphate leases or interests in such leases, or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding such leases or interests therein or both.

196.3 Qualifications of applicants. Leases may be issued to (a) citizens of the United Ststes, (b) associations of citizens, and (c) corporations organized under the laws of the United States or of any State or Territory thereof.

196.4 Minimum expenditure and lease bond. (a) An actual bona fide expenditure for prospecting, where necessary, and mine operations, development, or improvement purposes of the amount determined by the Secretary of the Interior will be a condition in each lease as to the minimum basis on which it will be granted, with the requirement that not less than one-third of such expenditure shall be made during the first year, and a like amount each year for the two succeeding years, the expenditure during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. Except as to the sums required to be expended for prospecting on the leased land, the minimum expenditure requirement may be met, when so authorized in the lease, by expenditures made or to be made off the leased land but for its benefit.

(b) A bond, in such sum as may be fixed in the notice of leasing but in no event less than $5,000, executed by the lessee with approved corporate surety on Form 4-1113 or the lessee's personal bond on Form 4-1114, conditioned upon compliance with the expenditure requirement and the other terms of the lease will be required. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond.

196.5 Minimum production. Each lease will contain appropriate conditions fixing a minimum annual production of the leased deposits beginning with the fourth year from date thereof or payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, theelements, casualties not attributable to the lessee, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss. When authorized in the lease the minimum production requirements may be satisfied by production from other properties controlled by the lessee and constituting a necessary reserve so located as to be a part of a successful unit operation.

196.6 Lessee's petition for change in minimum production. The lessee may request at any time prior to the end of the thirtieth lease month, that the Secretary reduce the amount of the minimum production specified in the lease upon the basis of the showing submitted by the lessee. The petition must be filed in duplicate with the office from which his lease was delivered. It should give, among other relevant information, (a) his estimate of tonnage of mineral phosphate rock and associated or related minerals in the leased land, (b) all available information as to the grade thereof, (c) his plan of operation for the property and adjacent property to be worked therewith, (d) a general statement of the method or methods which he intends to use in mining and processing of the phosphate rock and associated or related minerals, (e) the estimated rate of its extraction and (f) possible absorption in the markets. Within six months after receipt of this information the Secretary, after considering what would be a reasonable period within which to mine theleased deposits taking into account, where material, the lessee's mining operations on adjacent phosphate land owned or controlled by him, will determine whether the minimum production requirement in the lease shall be changed to a lesser figure than the amount then provided.

196.7 Application for lease. 1/ Application for lease must be filed in duplicate in the proper district land office or, for lands or deposits in States in which there is no district land office, in the Bureau of Land Management, Washington 25, D.C. The application, if for a noncompetitive lease, must be accompanied by the first year's rental of twenty-five cents per acre for each acre of land included in the lease application. No specific form is required but the application should cover the following points:

(a) Applicant's name and address.

(b) A statement of his interests, direct or indirect, whether as a member of an association or stockholder in a corporation, or otherwise in other phosphate leases or applications therefor on public lands, identifying the same by land office and serial number together with the total amount of acreage so held both in the State in which the lease is desired and in the United States, and a statement that such holdings under said Act within the State in which the land is situated, together with the lands applied for, do not exceed in the aggregate 5,120 acres and a like statement.

1/ 18 U.S.C. section 80 makes it a crime for any person knowingly or wilfully to submit or cause to be submitted to any agency of the United States any or fraudulent statement as to any matter within its jurisdiction.

with respect to the maximum allowable area of 10,240 acres in the United States.

(c) Proof of citizenship; in the case of an individual, by a statement as to whether native-born or naturalized and, if naturalized, date of naturalization, court in which naturalized, and number of certificate, if known; if a woman, whether she is married or single, and if married, the date of her marriage and citizenship of her husband. Associations are required to file a certified copy of their articles of association and the same showing as to the citizenship and holdings of their members as required of an individual and specified herein. Corporations are required to file a certified copy of their articles of incorporation and a showing as to residence and citizenship of the stockholders; if 20 percent or more of the stock of any class is owned or controlled by any one stockholder, a spearate showing of his citizenship and holdings. In case any of the stock of the corporation is held by aliens, a showing is required giving, to the extent reasonably ascertainable, the name, the country to which each owes allegiance and the amount of stock held by each.

(d) Description of the land for which lease is desired, by legal subdivisions or, if unsurveyed, by metes and bounds, connected with a corner of the public survey by course and distance, and, where possible, description of the land by the approximate subdivisions of the future survey.

(e) To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits, (such examination shall not be deemed a trespass), giving nature and extent of the deposits, an outline in general terms of the proposed method of mining and processing of same; the proposed investment in mining operations thereon, and processing facilities therefor.

(f) Each applicant must show in sufficient detail that

(1) the amount of phosphate lands, Federal and non-Federal, held by him together with the lands described in the application are necessary for his proposed development plan.

(2) he intends to explore, mine and develop the property in good faith;

(3) he is financially and otherwise able to comply with the minimum expenditure requirements for exploration, mining and development of the property; and

(4) his proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

(g) The applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Application on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

(h) And in addition, in the case of noncompetitive lease applications, the extent to which further prospecting is necessary before development can reasonably be undertaken and the general exploration program which will be undertaken, the estimated expenditure under such exploration program, and the maximum period of time required for its completion, not to exceed three years.

196.8 Noncompetitive application; publication; protests. (a) If upon our examination of the first application filed to lease the lands noncompetitively, and such additional information as the applicant may be required to submit, in support of it, and upon the report of the Geological Survey as to the need for further exploration and any other technical matters submitted to it, the Secretary determines that the applicant is qualified, and that the lands or deposits constitute an acceptable leasing unit and are subject to phosphate lease and that further exploration is necessary before development could reasonably be undertaken, the applicant, as a condition precedent to the issuance of the lease, will be required to publish, at his own expense, once a week for four consecutive weeks in a designated newspaper of general circulation in the county or counties in which the land is situated, a notice, specified by the Secretary, containing the terms upon which the lease will be issued to the applicant in the absence of a protest deemed valid by the Secretary. The applicant will be required to commence publication within 30 days after service of the decision upon him unless he requests reconsideration of the decision within that time:

(b) The notice shall describe the land, specify the rental and rate of royalty to be paid under the lease, state the minimum expenditure and minimum production requirements, together with a general statement as to the exploration program required by the Secretary to be undertaken by the applicant after lease issuance to ascertain that development is feasible under the lease. The notice shall also state (1) that the minimum production requirement will not be reduced or waived at the lessee's request except as provided in sections 196.5, 196.6, 191.25 or 191.26, and (2) that the lease will be canceled if apart from or in addition to any other grounds that may exist therefore, production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease. A copy of the notice will be posted in the district land office after receipt by the manager.

(c) A valid protest may be based upon (1) a prior equitable claim, (including a mining location,) or (2) the fact that there is sufficient interest by qualified applicants to justify offer of lease by competitive bidding. A protest based upon the second ground must be accompanied by the payment of the first year's rental of 25¢ per acre for the land, together with a showing that the protestant has the qualifications of an applicant under section 196.7. In addition, there must be set forth in the protest an offer to reimburse the applicant in whole, or ratably with other similar protestants, for the cost of publishing the notice of the application. Decisions on protests will be made within 30 days after the applicant has submitted proper proof of publication. No application will be rejected on the second ground unless proof is filed that, when directed by the Secretary, payment of the advertising cost has been made or a satisfactory tender is being made and is still being kept open. If the protest is rejected or if the protestant is not the successful bidder when a sale is held, his rental payment will be returned to hom.

(d) If the Secretary decides after the receipt of an application or after proof of advertising has been submitted that the land is not available for leasing or that the applicant is not entitled to a lease or that the land should be offered for competitive bidding the rental payment will be returned to the applicant and his application for a noncompetitive lease rejected.

196.9 Issuance of noncompetitive lease. The applicant should file with the district land office, within 30 days after publication has been completed, proof thereof, together with a lease duly executed by him in quintuplicate on Form 4-4110 and the bond required by section 196.4(b) of this part. In the absence of protest or of a protest deemed valid and if all else is regular, the lease will be issued and dated as of the first day of the month following its issuance, unless the applicant requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the lessee need not deposit the executed lease and bond until the land has been surveyed and the plat of such survey accepted and officially filed. A survey will be made at the expense of the Government. If the applicant has not reported compliance with the requirements of the decision issued under section 196.8, within 120 days of its receipt by him, the annual rental deposited by the applicant will be covered into the Treasury and the applicant advised that the case has been closed.

196.10 Offer of lands or deposits for lease by competitive bidding. If the Secretary of the Interior, upon the report of the Geological Survey, with respect to an application for lease or otherwise, as to the need for further exploration, royalty rates, minimum expenditure and production requirements and any other technical matters submitted to it, determine that specific lands or deposits which constitute an acceptable leasing unit are subject to phosphate lease without the need of further exploration before development could reasonably be undertaken, the offer of lease will be made on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bids either at public auction or by sealed bids as provided in the notice of sale.

196.11 Notice of lease offer. Notice under the preceding section, of the offer of the lands or deposits for lease will be given by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, and in such other publications as the Director, Bureau of Land Management, may authorize. The notice will be published at the expense of the Government. A copy of the notice will be posted in the proper district land office during the period of publication. The notice of publication shall state the place where and the date and hour on which bids will be received, and whether the sale will be at public auction or by sealed bids, and shall describe the land, the rental and rate of royalty to be charged, the minimum investment and the minimum production required. The notice shall also state (1) that the minimum production requirement will not be reduced or waived at the lessee's request except as provided in sections 196.5, 196.6, 191.25, or 191.26, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss; and (2) that the lease will be cancelled if production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease. The right is reserved by the Secretary, in the public interest, to reject any and all bids; and should a bid be rejected, the deposit made by the bidder will be returned.

All bidders at any public sale of leases are warned against committing any act by intimidation, combination, or unfair management, to hinder or prevent bidding thereon, in violation of section 59 of the Criminal Code of the United States, approved March 9, 1909 (35 Stat. 1099; 18 U.S.C. 113).

196.12 Action by successful bidder. The successful bidder at a sale by public auction must deposit with the manager of the district land office or other officer conducting the sale on the day of sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check, money order, or cash, for one-fifth of the amount bid by him; evidence of qualifications as prescribed in sections 196.7(b), (c), (g) and (h), if a current showing in that regard has not been filed. If the land is surveyed, the successful bidder will be allowed 30 days from dateof auction or where sealed bids are submitted, 30 days from receipt of notice that his bid has been accepted within which (a) to file in the proper land office a lease, duly executed by him, in quintuplicate, on Form 4-1110 and the bond required by section 196.4(b) of this part; and (b) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with requirements (a) and (b) in this section until the land has been surveyed and the plat of such survey accepted and officially filed. The survey will be made at the expense of the Government. If the bidder fails to comply after due service of notice, that portion of his deposit representing the minimum required to be deposited with the bid shall be held as liquidated damages and disposed of as other receipts under the Mineral Leasing Act.

196.13 Assignments of leases; subleases. Leases may be assigned or subleased in whole or in part to any person or corporation qualified to hold such leases. All instruments of transfer of a lease or of an interest therein including assignments of record title, subleases, operating agreements and working or royalty interests, must be filed

See Amend.

for approval within 90 days from the date of final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required if a lease applicant by section 196.7(b), (c), (g) and (h) hereof. If the instruments fail to describe the true consideration therefor, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection. If a bond is necessary it must be furnished. Assignments of record title interests, including operating agreements, must be filed in triplicate. A single executed copy of all other instruments or transfer is sufficient. An assignment of such leases shall take effect the first day of the month following its final approval by the Director, Bureau of Land Management, or if the assignee requests, the first day of the month of the approval.

The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the effective date of the approval of the assignment of sublease. If the assignment or sublease is not approved, their obligations to the United States shall continue as though no such assignment or sublease had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any term in the assignment or sublease to the contrary.

The lease account must be in good standing before approval of an assignment will be given.

196.14 Readjustment of terms and conditions at end of twenty-year periods. The terms and conditions of a lease may be readjusted at the end of each twenty-year period succeeding the date of the lease. Prior to the expiration of that period, the lessee will be advised of the reasonable readjustment of terms proposed by the Department or notified that no readjustment is to be made for the next period. The lessee may file his consent to such proposed readjustment or inform the Department as to the terms which are unsatisfactory. After considering the suggestions of the lessee, the Secretary shall make his determination as to the reasonable readjustment of terms to be effective for the twenty-year period under consideration.

196.15 Relinquishment of lease. Upon payment of all rentals, royalties and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lesse, the lessee may surrender the entire lease at any time during the first three years of the lease. The lessee may during the first three years of the lease, upon a satisfactory showing that the public interest will not be impaired, surrender any legal subdivision or subdivisions of the area included within the lease. In no case will such lease be so terminated in whole or in part until and unless the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered thereby. The surrender of all or part of a lease after the third year may be permitted in the discretion of the Secretary and only if the conditions specified in this section have been satisfied. A surrender must be by a relinquishment filed, in triplicate, in the proper land office. A relinquishment upon its approval shall take effect as of the date it is filed.

196.16 Cancellation of lease. If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under section 196.14, supra, or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act, provided, that, as to any default occuring under a lease issued noncompetitively not corrected prior to the commencement of production, the Secretary may cancel such lease without institution of such court proceedings. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause or forfeiture, or for the same cause occurring at any other time.

196.17 Use of silica, limestone or other rock. Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of the act shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the leased deposits or deposits from other lands upon payments of such royalty as may be determined by the Secretary of the Interior, which royalty may be stated in the lease when issued, or, may be provided for by an attachment to the lease to be duly executed by the lessor and the lessee.

196.18 Use permits for additional lands. (a) A lessee may be granted a right to use the surface of not exceeding 80 acres of unappropriated and unentered public land not included within the boundaries of a national forest as may be necessary for the proper extraction, treatment, or removal of the leased deposits. The annual charge for the use of such land will be not less than $1.00 per acre or fraction thereof.

(b) Applications for permits for such additional land shall be filed in the office specified in section 196.7 hereof. Such applications must set forth the specific reasons why the additional land is necessary to the lessee for the use named, describe the land desired in accordance with section 196.7(d) hereof, and also set forth the reasons why the land is desirable and adapted to the uses named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated. The application must also contain an agreement to pay the annual charge prescribed in the permit. Use permits will be issued on Form 4-1111 dated as of the first day of the month after its issuance unless the lessee requests that it be dated the first day of the month of issuance.

196.19 Claims initiated prior to February 25, 1920. Section 37 of the act of February 25, 1920 (41 Stat. 451; 30 U.S.C. 193), provides that thereafter the deposits of phosphates described in the act may be disposed of only in the manner provided by the act, "except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under said laws, including discovery."

Those claims initiated under the pre-existing law may go to patent which, at the date of the act, were valid mining locations, duly made and maintained as such on lands subject to such location at the date initiated.

Effective date. These regulations shall become effective 30 days after their publication in the Federal Register.

(Sgd) Marion Clawson

Director.

Approved: January 14, 1949.

(Sgd) J. A. Krug

Secretary of the Interior.

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Circular No. 1722, Amendment No. 1.

Obsolete

Replaced by No. 1738

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43---PUBLIC LANDS INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PHOSPHATE LEASES

That part of the second sentence of Section 196.13 which reads "if a lease applicant by Section 196.7 (b), (c), (g) and (h)," is amended to read "of a lease applicant by Section 196.7 (b), (c), (f) and (g)." (Sections 9-12 and 32, 41 Stat. 440, 441, 450; 30 U.S.C. 211-214 and 189).

(Signed) Roscoe E. Bell,
Associate Director.

Approved: Feb. 25, 1949
(Signed) Oscar L. Chapman,
Under Secretary of the Interior.

DISTRICT LAND OFFICE
DENVER, COLO.
DATE FEB 21 1949
HOUR

Circular No. 1723

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 191--GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES AND LICENSES
(PARTS 192 to 198, INCLUSIVE)

Sec. 191.3 is amended by adding the following:

A mineral lease or permit will not be issued to a minor.

Sec. 191.11 is amended to read as follows:

Sec. 191.11 Filing Fees. Effective March 1, 1949, all applications for prospecting permits, licenses, or non-competitive leases, excepting phosphate lease applications, must be accompanied by a filing fee of $10.00 for each application. Such fees will be retained as a service charge even though the application should be rejected or withdrawn in whole or in part.

Sec. 191.12 is deleted.

(Sec. 32, 41 Stat. 450, 30 U.S.C. 189)

(Sgd) Roscoe C. Bell

Associate Director.

Approved: January 19, 1949

(Sgd) C. Girard Davidson

Assistant Secretary of the Interior.

Reserve Stock

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Obsolete
See #1764

Circular No. 1724

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43—PUBLIC LANDS: INTERIOR
CHAPTER I—BUREAU OF LAND MANAGEMENT

PART 257—LEASE OR SALE OF SMALL TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL OR BUSINESS SITES[1]

Sec.
257.1 Statutory Authority; lands which may be leased or sold.
257.2 Definitions.
257.3 Policy
257.4 Qualifications of applicants; restrictions on purchase and lease.
257.5 Execution and filing of applications.
257.6 Fee.
257.7 Action on application by Manager.
257.8 Classification of land.
257.9 Occupancy; preference right of applicant; action on application.
257.10 Issuance of lease; option to purchase.

Sec.
257.11 Renewal of lease; preference rights.
257.12 Assignment of lease; subleases of leased lands.
257.13 Cancellation or modification of lease.
257.14 Sale
257.15 Minerals.
257.16 Timber.
257.17 Rectangular tracts.
257.18 Supplemental plats.
257.19 Irregular tracts; cost of special survey.
257.20 Tracts on unsurveyed land.
257.21 Appeals.

AUTHORITY: Sections 257.1 to 257.21 issued under 52 Stat. 609; 43 U.S.C. 682a.

Section 257.1 Statutory Authority; lands which may be leased or sold. The Act of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467; 43 U.S.C. 682a), authorizes the Secretary of the Interior, in his discretion, to lease or sell to any person who is the head of a family, or who has arrived at the age of 21 years, and is a citizen of the United States, or who has filed his declaration of intention to become such citizen, as required by the naturalization laws, a tract of not exceeding 5 acres, in reasonably compact form, of any vacant, unreserved, surveyed public land, or survey public land withdrawn or reserved by the Secretary of the Interior for any purposes, or surveyed lands withdrawn by Executive Order 6910 of November 26, 1934, and 6964 of February 5, 1935, for classification, which the Secretary may classify as chiefly valuable as a home, cabin, camp, health, convalescent, recreational, or business site. The act is applicable to lands in such areas as grazing districts, but is not applicable to lands withdrawn by the Secretary solely under delegated authority (e.g., under Executive Order No. 9337, of April 24, 1943) or to land in such reservations as national forests, national parks or national monuments, or to the revested Oregon and California railroad or the reconveyed Coos Bay Wagon road grant lands, in Oregon. The lands cannot be leased or sold until classified for such purposes.

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[1] Reprint of Circular No. 1647, May 27, 1947, as amended by Circular No. 1665, November 19, 1947, Circular No. 1691, August 6, 1948, and Circular No. 1710, December 10, 1948.

The act applies to public lands in Alaska, and permits employees of the Department of the Interior stationed in Alaska, in the discretion of the Secretary, to purchase or lease one tract in Alaska for any purpose under the act, except as a business site. /Circ. 1647, May 27, 1947/

257.2 Definitions:

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional Administrator" means the Regional Administrator, Bureau of Land Management.

(d) "Manager" means Manager of the District Land Office. Where there is no District Land Office, it means the Regional Administrator.

(e) "The act" means the Act of June 1, 1938 (52 Stat. 609), as amended.

(f) Sites.

(i) A home site is a site suitable for a permanent, year-round residence for a single person or a family.

(ii) A cabin site is a site suitable for a summer, weekend, or vacation residence.

(iii) A camp site is a site suitable for temporary camping and for the erection of simple or temporary structures and shelters, such as tents, tent platforms, etc.

(iv) A health site is a site suitable for the temporary or permanent residence of a single person or of a family for the prevention or cure of disease or illness.

(v) A convalescent site is a site suitable for residence of a single person or family for the purpose of recuperation from a disease or illness.

(vi) A recreational site is a site chiefly suitable for non-commercial outdoor recreation. [Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1710, December 10, 1948]

(vii) A business site is a site suitable for some form of commercial enterprise.

257.3 Policy. It is the policy of the Secretary in the administration of the Act of June 1, 1938, to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end applications for sites will be considered in the light of their effect upon the conservation of natural resources and upon the welfare not only of the applicants themselves but of the communities in which they propose to settle.

Applications will not be allowed, for example, which would lead to private ownership or control of scenic attractions or water resources that should be kept open to public use. Nor will isolated or scattered settlement be permitted which would impose heavy burdens upon state or local governments for roads, schools, and police, health, and fire protection. Types of settlement, or business which might create "eyesores" along public highways and parkways will be guarded against, and lands will not be leased or sold under the act if such action would unreasonably interfere with the use of water for grazing purposes or unduly impair the protection of watershed areas.

No direct sale will be made of lands under the act. Use and improvement of the land under lease will be required before it will be sold. Leases of lands which are classified for lease and sale will contain an option permitting the lessee to purchase as provided in section 257.10 of the regulations in this Part. Lands which are classified for lease only will not be sold and leases of such land will not contain an option to purchase clause. [Circ. 1647, May 27, 1947; Circ. 1710, December 10, 1948]

257.4 Qualifications of applicants; restrictions on purchase and lease. An application to lease or purchase may be made by any person, including a married or single woman, who is a citizen, or has declared his or her intention to become a citizen, of the United States, and who is 21 years of age or, if under that age, the head of a family. Unless warranted by special circumstances, where a husband and wife are living together, only one of them may acquire a tract under the act.

Employees of the Department of the Interior stationed in Alaska may lease or purchase one tract in Alaska for any purpose under the act except business.

No person will be permitted to lease or purchase more than one tract under the act, except upon a satisfactory showing that such action is warranted. Where more than one tract is applied for under the act by the same person, except where otherwise authorized by the Regional Administrator, each tract must be the subject of a separate application, which must be complete in itself, must be filed in accordance with all of the applicable regulations, and must be accompanied by a showing that the allowance of more than one application is warranted by the circumstances.

In each application to purchase or lease, the applicant must furnish data sufficient to identify all other applications under the act, if any, filed by him or any member of his family. Such data should include the serial number and date of filing of each such application and the land office at which it was filed. [Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1691, August 6, 1948; Circ. 1710, December 10, 1948]

257.5 Execution and filing of applications. An application for lease under the act must be filed on Form 4-775. An application for sale should be made on Form 4-775a. All applications must be prepared with an original and one copy. The application must be filed with the manager of the land office for the district within which the land is situated. If the land is in a State in which there is no district land office, the application must be filed with the Director. The application need not be under oath but must be signed by the applicant.[2] [Circ. 1647, May 27, 1947; Circ. 1665; November 19, 1947; Circ. 1710, December 10, 1948]

See Circ. 1737, Amend. 1

~~257.6 Fee. An application for lease must be accompanied by a filing fee of $5, which will be carried as unearned, pending action on the application. If the application is rejected, the fee will be returned. If a lease is offered to the applicant, the fee will be considered as earned and will be retained. An application for sale need not be accompanied by a filing fee. [Circ. 1647, May 27, 1947]~~

257.7 Action on application by Manager. If an application is not properly executed or is not accompanied by the required fee, or is otherwise irregular, the manager will reject it. [Circ. 1647, May 27, 1947]

257.8 Classification of land. If the application is regular and the status of the land applied for warrants its consideration for classification under the act, the Regional Administrator, upon receipt of the application, will proceed to have such studies and investigations made as may be required for a determination as to whether or not it should be classified for small tract purposes. Where the land applied for has been withdrawn or reserved by the Secretary, the concurrence of the bureau having supervision over the land must be obtained before the land may be classified.

A single tract of 5 acres or less may be classified as suitable for one or more of the above types of sites specified in section 257.2. Each tract will be classified as available either for lease and sale or for lease only. Tracts which are classified for lease only will not be subject to sale.

The Regional Administrator may classify lands under the act either on his own motion or upon application. Where land is classified by the Regional Administrator on his own motion, prior to September 27, 1954, veterans of World War II have a preference right for 90 days, after the effective date of the classification of the lands, in which to file a small tract application. (Section 4, Act of September 27, 1944; 58 Stat. 745, 43 U.S.C. 282).

2/ Title 18, U.S.C., sec. 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

No lease will be offered and no sale authorized prior to the classification of the land for such disposal. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1691, August 6, 1948/

257.9 Occupancy; preference right of applicant; action on application. The filing of an application confers no right upon the applicant to settle upon, use or occupy the land and all persons are warned not to make such settlement, and not to use or occupy the land prior to the issuance of a lease. Any such unauthorized settlement, use or occupancy constitutes a trespass.

Where an application is regularly filed pursuant to the regulations in this Part prior to the time the manager is notified by the Regional Administrator that the area is under consideration for small tract classification, a preference right to lease or purchase will be accorded the applicant if the land is thereafter classified for the type of site for which application has been made and the application is made to conform to the area and dimensions specified in the classification order.

Applications filed subsequent to the receipt of such notice by the manager shall be acted upon and disposed of in accordance with the terms of the respective classification orders. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1691, August 6, 1948/

257.10 Issuance of lease; option to purchase. The manager will act on applications for and may issue leases upon lands, for periods not exceeding five years, which are classified for any purpose specified in the act, provided that (1) the applicant, upon the issuance of such lease, will have only one tract under the act and (2) the application covers a tract established by the order of classification. All other leases will be issued by the Regional Administrator.

Leases under the act will be prepared in quadruplicate on Form 4-776. A lease will be issued for a period of not more than five years, unless the character of the venture justifies a longer period. Each lessee will be required to pay the annual rental, in advance, to the manager of the proper district land office. If the annual rental does not exceed $10, the lessee will be required to pay the rental for the entire lease period in advance of the issuance of the lease. The advance rental will be considered as earned upon issuance of the lease and will be retained.

The lease will contain provisions relating to the improvements to be placed on the lands and such other conditions of occupancy as are set forth in the order of classification, including an appropriate set back of the improvements from the boundaries of the leased tract. Plans for improvements may be submitted to the Regional Administrator for approval in advance of construction.

All leases of tracts which are classified for lease and sale will contain a provision affording the lessee or his duly approved successor in interest an option to purchase the tract at or after the expiration of one year from the date the lease is issued, provided the improvements required by the lease have been made and the lessee, or his successor in interest has otherwise complied with the terms and conditions of the lease, including the option to purchase clause. The option to purchase clause will set forth the appraised value of the unimproved land at the date the lease was issued. This value, together with the cost of survey, if any, necessary to describe the land properly, will constitute the price at which the land may be purchased.

Leases of tracts which are classified for lease only will not contain an option to purchase clause. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1691, August 6, 1948; Circ. 1710, December 10, 1948/

257.11 Renewal of lease; preference rights. The manager may act upon all applications to renew leases. He may issue such renewal leases for periods not exceeding five years, provided the land then is classified for the purpose specified in the original lease.

Upon the filing of an application for the renewal of a lease, not more than six months or less than 60 days prior to its expiration, the lessee or his duly approved successor in interest will be awarded a preference right to a new lease, upon such terms and for such duration as may be fixed, if it is determined that a new lease should be granted. No option to purchase clause may be placed in the renewal lease if it is not in the original lease unless the lands have been classified for sale. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1710, December 10, 1948/

257.12 Assignment of lease; subleases of leased lands. The manager may approve assignments of leases and subleases of any lands, except where more than one tract would be assigned or subleased to an assignee or sublessee. In such case the assignment or sublease must be approved by the Regional Administrator.

Proposed assignments of leases, and proposed subleases of leased lands, in whole or in part, must be submitted, in triplicate, within 90 days from the date of execution for approval by the appropriate officer designated above. The proposed assignment or sublease must contain all of the terms and conditions agreed upon by the parties thereto, must be accompanied by the same showing by the assignee or sublessee as is required of applicants for a lease, and must be supported by a showing that the assignee or sublessee agrees to be bound by the provisions of the lease. No assignment or sublease will be recognized unless and until approved by the appropriate officer designated above. /Circ. 1647, May 27, 1947; Circ. 1665, May 19, 1947; Circ. 1691, August 6, 1948/

257.13 Cancellation or modification of lease. The manager may cancel any lease where the lessee has failed to comply with any of the terms, covenants and stipulations of the lease or to abide by any of the regulations in this Part, and such default has continued for 30 days after written notice thereof. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1710, December 10, 1948/

257.14 Sale. The Manager may authorize the sale of these tracts which have been classified for sale whenever, within the limitations of the lease and the regulations in this Part, he may consider such action appropriate.

Lands will be classified for sale where found to be primarily suitable for use and occupancy as provided by the act, and where their disposal and use in private ownership will not interfere unduly with the use of private lands or other Federal lands. Tracts will be sold under the act when the lessee or his duly approved predecessor in interest has placed the improvements on the tract required by the lease and otherwise has complied with the terms and conditions of the lease but no sale may be made and no application for sale may be filed until the tract has been under lease to the sale applicant or his duly approved successor in interest for at least one year from the date the lease was issued. The sales price of the tract will be indicated in the option to purchase clause of the lease.

An application for sale should be made on Form 4-775a. When a sale is authorized, the applicant will be allowed 60 days from service of notice of such authorization to deposit the amount required. If the purchase price is $25, or less, the entire amount must be paid within such 60-day period. If the purchase price is more than $25 and not more than $50, at least $25 must be paid within the 60-day period and the balance must be paid within one year after the date of such payment. If the purchase price is more than $50, at least one-third of the purchase price, but not less than $25, must be paid within the 60-day period and the balance may be paid in two equal annual installments due respectively one and two years after the date of the first payment.

Any advance rentals paid for the lease period subsequent to the date that the application for sale is properly filed will be credited against the purchase price, as follows: Credit will be allowed for each full one-quarter of a year for which advance rental was paid but not for advance payment covering less than a full one-quarter of a year.

If the applicant has paid the full purchase price and otherwise complied with the foregoing and no objection appears, cash certificate will be issued by the Manager, to be followed by patent. [Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1691, August 6, 1948; Circ. 1710, December 10, 1948]

257.15 Minerals. Any lease or patent issued under the act will reserve to the United States (1) all deposits of coal, oil, gas, or other minerals, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary may prescribe, and (2) all fissionable source materials, together with the right to prospect for, mine and remove the same, in accordance with the Act of August 1, 1946 (60 Stat. 755). Any minerals subject to the leasing laws, in the lands patented or leased under the terms of the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal. No provision is made at this time to prospect for, mine, or remove the other kinds of minerals that may be found in such lands, and until rules and regulations have been issued, such reserved deposits will not be subject to prospecting or disposition. [Circ. 1647, May 27, 1947]

257.16 Timber. A lessee will not be permitted to cut timber from the leased lands without first obtaining permission through the district land office. Such permission will not be granted except where the timber is to be cut to clear the land or to make improvements. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947/

257.17 Rectangular tracts. The official township plats ordinarily provide the basis for descriptions of tracts, in compact form, in units of 5 acres or aliquot parts thereof. Where a tract, not exceeding five acres, can be conformed to legal subdivisions of the survey, no additional official survey will ordinarily be made by the Government beyond the identification of the quarter quarter section corners. /Circ. 1647, May 27, 1947/

257.18 Supplemental plats. Where a tract is situated in the fractional portion of a sectional lotting, a supplemental plat may be required to afford a suitable description. The plat will be prepared at the time of the approval of the application. If the subdivision of the sectional lotting would result in narrow strips or other areas containing less than 2½ acres, not suitable for sale or lease as separate units, such excess areas, in the discretion of the Regional Administrator, may be included in the adjoining 5-acre tracts. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1691, August 6, 1948/

257.19 Irregular tracts; cost of special survey. Where, in the opinion of the Regional Administrator, the rectangular form is not the most desirable plan for development of an area, tracts irregular in form, not in excess of 5 acres each, may be leased or sold in accordance with the regulations in this Part. Applicants for such tracts will be required to submit a metes-and-bounds description sufficiently complete to identify the location, boundary, and area of the lands. Where a special official survey is required of an irregular tract for the purpose of patent or lease description, the cost thereof will be paid by the applicant. If there is a group of contiguous or closely associated tracts to be surveyed at one time the cost will be pro-rated among the tracts on an acreage basis. The applicant will be required to make an advance payment to the manager, equal to the estimated cost of executing the survey, before the field work will be undertaken. He will be credited with any excess payments prior to the issuance of patent for lease. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1691, August 6, 1948/

257.20 Tracts on unsurveyed land. Unsurveyed public lands are not subject to lease or sale under the act. Should an application be filed for such lands, the manager will reject it. However, if desired, the applicant may file a request for the survey of the lands with the Public Survey Office of the State in which the lands are situated or with the Regional Administrator if the lands are not within an organized surveying district. The description must be sufficiently complete to identify the location, boundary, and area of the land. There should also be given, if possible, the approximate description or location of the land by section, township and range. A person who requests the survey of an area acquires no preferential right to apply for the land under the act upon the completion of the survey and the official of the plat. After the survey is completed and the official plat is placed on record, the surveyed area will be subject to the provisions of the act and application may then be filed. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947; Circ. 1691, August 6, 1948/

257.21 Appeals. An appeal pursuant to the Rules of Practice, Part 221, may be taken from the decision of any subordinate officer of the Bureau of Land Management to the Director, and from the Director's decision to the Secretary. /Circ. 1647, May 27, 1947; Circ. 1665, November 19, 1947/

The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

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Still in effect 6/2/54 BD

Circular No. 1725

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 101--GENERAL REGULATIONS INVOLVING APPLICATIONS AND ENTRIES

OATHS

Section 101.21 is amended to read as follows:

Section 101.21 Elimination of the requirements of oaths on written statements in public land matters. By section 1 of the act of June 3, 1948 (62 Stat. 301; 43 U.S.C. 1211), written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require. Accordingly, all written statements in public land matters within the jurisdiction of the Department of the Interior required prior to June 3, 1948, by law, or Chapter I of this title, to be made under oath, need no longer be made under oath, except as provided below:

(a) Affidavits must be furnished where required by Part 221-Rules of Practice, Part 222--Government contests and Part 223--Witnesses,

(b) Final proofs required by R. S. 2294 (43 U.S.C. sec. 254) as amended and supplemented, and the regulations thereunder, to be taken in affidavit form before designated officers shall be taken in that form before such officers. (See 43 CFR 52.1; 65.23, 166.48, 232.30, 285.22 and 210.1).

(c) Statements as to the financial worth of individual sureties on bonds furnished in connection with leases, licenses or permits granted under the public land laws, known as "Affidavits of Justification," must be made in affidavit form.

Where prior to June 3, 1948, the law required an application or other paper to be sworn to in a particular land district, and this section makes it unnecessary for the paper to be executed in affidavit form, the applicant still must sign the paper in the particular land district and state in the paper that it was so signed.

Unsworn statements in public land matters are subject to Title 18, U.S.C., sec. 1001, which makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statement or representations as to any matter within its jurisdiction. (R.S. 453, 2478, 43 U.S.C. secs. 2, 1201; 62 Stat. 301, 43 U.S.C. 1211, 1212).

(Signed) Marion Clawson,
Director.

Approved: Feb. 25, 1949
(Signed) Martin G. White,
Acting Assistant Secretary of the Interior.

Circular No. 1726
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER I--BUREAU OF LAND MANAGEMENT
PART 137--EVIDENCE OF NATURALIZATION REQUIRED TO ESTABLISH CITIZENSHIP IN PUBLIC LAND CASES[1]

Sec.
137.1 Evidence of citizenship status.

137.2 Statement required of married women and widows.

AUTHORITY: Sections 137.1 and 137.2 issued under R.S. 453, 2478; 43 U.S.C. 2, 1201.

Part 137 is completely revised, as follows:

Section 137.1 Evidence of citizenship status[2] (a) In cases where proof of citizenship status is required, the manager may accept a statement of the applicant giving the facts as to such status, which statement should include the date of the alleged naturalization or declaration of intention, the title and location of the court in which instituted, and, when available, the number of the document in question, if the proceeding has been had since September 27, 1906. In addition, in cases of naturalization prior to September 27, 1906, there should be given the date and place of the applicant's birth and the foreign country of which he was a citizen or subject.

The citizenship showing may be incorporated in any of the forms prescribed for use in connection with the entry of public lands. Where the necessary data have been given, the manager will accept same and proceed with the case.

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[1] This part does not deal with establishing citizenship by birth.

[2] Title 18, U.S.C., Sec. 1001, makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States, any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(b) The manager may accept the following evidence of a party's citizenship status, where proof of such status is required:

(1) A declaration of intention to become a citizen of the United States executed not more than seven years prior to the date of the filing of the public land application (a declaration more than seven years old is invalid); or

(2) An acknowledgment from the clerk of court (Immigration and Naturalization Service Form N-414) of the filing of a petition for naturalization; or

(3) An original certificate of naturalization or duplicate issued by the Immigration and Naturalization Service in lieu of one lost, mutilated or destroyed. Any document listed in this subsection (b) will be returned by the Bureau of Land Management to the party entitled thereto, as soon as it has served the purpose for which it is submitted.

Section 137.2 Statement required of married women and widows. A married woman, or widow, who is required to furnish evidence of citizenship in this country in connection with an application or entry under the public land laws must furnish a statement showing the facts upon which she bases her claim to such citizenship2/.

(a) A married woman must show the date of her marriage.

(b) A widow must show the date of her marriage and the date of the death of the husband.

(c) If a married woman or widow claims citizenship through her husband, she must show the facts as to his citizenship and that they were married prior to September 22, 1922. If he acquired such citizenship by naturalization, satisfactory evidence of the naturalization must be furnished in the manner provided by Section 137.1.

(d) If applicant was married prior to March 3, 1931, she must show the facts as to her husband's citizenship. An applicant who married on or after March 3, 1931, need not make any showing as to the citizenship of her husband.

3/ See Sec. 3, Act of March 2, 1907 (34 Stat. 1228), Act of September 22, 1922 (42 Stat. 1021), Act of March 3, 1931 (46 Stat. 1511), and the Act of June 25, 1936 (49 Stat. 1917), as amended by the Act of July 2, 1940 (54 Stat. 715), and Section 317(b) of the Nationality Act of 1940 (54 Stat. 1146-1147, 8 U.S.C. 717).

An applicant who claims citizenship through her own naturalization separate and apart from the naturalization of the husband or who bases her right to file a particular application on the filing by herself of a declaration of intention to become a citizen must in the manner provided by Section 137.1, furnish satisfactory evidence of her naturalization or of the filing of the declaration.

An applicant who fails to make the showing required, as stated, should be allowed 30 days from receipt of notice within which to do so, or to appeal.

(Sgd) Marion Clawson
Director

Approved: March 18, 1949

(Sgd) Mastin G. White
Acting Assistant Secretary of the Interior

The reporting requirement has been Approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

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GPO 840-840

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Replaced by
Circular 1944
(11/58)

Circular No. 1728

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT

PART 170--NATIONAL FOREST HOMESTEADS

Sec.

Entry of lands in national forests after examination, classification, listing, and opening.

170.1 Statutory authority.
170.2 Examination, classification, and listing of lands for settlement and entry.
170.3 Classification directed; request for classification.
170.4 Classification notice to be posted and published.
170.5 Payment for publication of classification notice.
170.6 Notice of classification to claimants.
170.7 Preference right claimants.
170.8 Survey required before proof.
170.9 Metes and bounds surveys authorized.
170.10 Application for survey; posting on land of copy of approved plat.
170.11 Commutation not allowed; requirements for proof.
170.12 Requirements as to posting of final proof notice, field notes and plats, where homestead entry survey is made.
170.13 Description of land by metes and bounds not required in proof notices.
170.14 National forest homesteads in southern California and in the Black Hills National Forest.
170.15 Classification and listing for homestead entry of land in Custer National Forest.
170.16 Conditions governing homestead settlements.
170.17 Claims initiated prior to establishment of forest protected.

Reprint, April, 1949, of Circular No. 263, May 2, 1922 (as codified for the 1938 edition of the Code of Federal Regulations), as amended by Circular No. 1546, May 28, 1943, and Circular No. 1689, July 28, 1948. The text has been corrected to show changes which have resulted from reorganization under section 403 of the President's Reorganization Plan No. 3 of 1946 (11 F. R. 7876, 60 Stat. 1100).

Entry of Lands in National Forests after Examination Classification, Listing, and Opening.

Section 170.1 Statutory authority. The Act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506-509), authorizes homestead entries for lands within national forests. (Circ. 263, May 2, 1922, 49 L. D. 9), 170.1 to 170.17 inclusive, issued under the authority contained in R. S. 453, 2478; 43 U.S.C. 2, 1201.

170.2 Examination, classification, and listing of lands for settlement and entry. Both surveyed and unsurveyed lands within national forests which are chiefly valuable for agriculture and not needed for public use may, from time to time, be examined, classified, and listed under the supervision of the Secretary of Agriculture, and lists thereof will be filed by him with the Secretary of the Interior. The Director, Bureau of Land Management will then declare the listed lands subject to settlement and entry. (Par. 1, Circ. 263, May 2, 1922 49 L.D. 9)

170.3 Classification directed; request for classification. By an Act approved August 10, 1912 (37 Stat. 287; 16 U.S.C. 506), the Secretary of Agriculture was directed to select, classify, and segregate all lands within the boundaries of national forests that may be opened to entry under the homestead laws applicable thereto. Any person interested in securing a classification or review of a classification previously made by the Secretary of Agriculture should present his request to the supervisor of the national forest in which the land is located, and should state the reasons which he may have for believing the land has not been properly classified. (Par. 2, Circ. 263, May 2, 1922, 49 L.D. 9)

170.4 Classification notice to be posted and published. When any lands have been declared subject to settlement and entry under the Act of June 11, 1906, a list of such lands, together with a copy of the notice of restoration thereof to entry and authority for publication of such notice, will be transmitted to the manager for the district within which the lands are located. Upon receipt thereof the manager will designate a newspaper published within the county in which the land is situated and transmit to the publishers thereof the letter of authority and copy of notice of restoration, said notice to be published in the designated newspaper once each week for 4 successive weeks. The manager will also post in his office a copy of said notice, the same to remain posted for a period of 60 days immediately preceding the date when the lands are to be subject to entry. If no paper is published within the county, publication should be made in a newspaper published nearest the land. (Par. 3, Circ. 263, May 2, 1922, 49 L.D.9)

170.5 Payment for publication of classification notice. The cost of publishing the notice mentioned in the preceding section will not be paid by the manager, but the publisher's vouchers therefor, in duplicate, should be forwarded to the proper regional administrator, by the publisher, accompanied by a duly executed proof of publication. The manager will require the publisher to promptly furnish him with a copy of the issue of the paper in which such notice first appears, will compare the published notice with that furnished by the Bureau of Land Management, and in case of discrepancy or error cause the publisher to correct the printed notice and thereafter publish the corrected notice for the full period of 4 weeks. (Par. 4, Circ. 263, May 2, 1922, 49 L.D. 9)

170.6 Notice of classification to claimants. In addition to the publication and posting above provided for, the manager will, on the day the list is filed in his office, mail a copy of the notice by registered letter to any person known by him to be claiming a preferred right of entry on any of the lands described therein, and also at the same time mail a copy of the notice by registered letter to each of the persons named after each tract in the restoration notice and advise each of them of his preferred right to make entry during the 60-day period prior to the date of restoration. Upon receiving evidence of service of such notice or notices the manager will forward same to the Bureau of Land Management. (Par. 5, Circ. 263, May 2, 1922, 49 L.D. 10).

Entry of Lands in National Forests after Examination, Classification, Listing, and Opening

170.7 Preference right claimants. Any person qualified to make a homestead entry who, prior to January 1, 1906, occupied and in good faith claimed any lands listed under the Act of June 11, 1906 for agricultural purposes, and who has not abandoned the same and the person upon whose application such land was listed, has, each in the order named, the preferred right to enter the lands so settled upon or listed at any time within 60 days prior to restoration of the land. Should an application be filed by such settler during the 60-day period the manager will, upon his showing by a signed statement the fact of such settlement and continued occupancy, allow the entry. If an application is filed during the said period by the party whose request the lands were listed, the manager will retain said application on file in his office until the date of restoration or until an entry has been made by a claimant having the superior preference right. If no application by a bona fide settler prior to January 1, 1906, is filed within the preference-right period the manager, will allow the application of the party upon whose request the lands were listed. If entry by a person claiming a settler's preference right is allowed, other applications should be rejected without waiting the expiration of the preferred period. Of the applicants for listing, only the one upon whose request a tract is listed secures any preference right. Other applicants for the listing of the same tract acquire no right by virtue of such applications.

All applications by others than the classes above referred to, which are filed prior to the date of opening, should be rejected forthwith notwithstanding the fact that an attempted transfer of the preference right of entry may have been made, but applications may be filed by the general public within 20 days prior to the date of restoration, and all such applications will be treated as simultaneously filed at 10 a. m. on the date of restoration, in accordance with sec. 295.8. (Par. 6, Circ. 263, May 2, 1922, 49 L.D. 10; Circ. 1689, July 28, 1948).

Cross References: For soldiers' and sailors' preference rights, see Part 182. For restorations, see Part 295.

170.8 Survey required before proof. When an entry embraces unsurveyed lands or irregular fractional parts of a subdivision of a surveyed section, a metes-and-bounds survey of such lands and fractional parts must be made at some time before the entryman applies to make final proof. Survey will not be required where the tract can be described by legal subdivisions or as a quarter or a half of a surveyed quarter-quarter section or rectangular-lotted tract, or as a quarter or half of a surveyed quarter-quarter-quarter-section or rectangular-lotted tract. (Par. 8, Circ. 263, May 2, 1922, 49 L.D. 11)

170.9 Metes and bounds surveys authorized. Under the Act of August 10, 1912

(37 Stat. 287; 16 U.S.C. 506), and subsequent Acts making appropriations for the Department of Agriculture, authority is given for the making of metes-and-bounds surveys by the forest officers under the direction of the regional administrator. (Par. 9, Circ. 263, May 2, 1922, 49 L.D. 11)

170.10 Application for survey; posting on land of copy of approved plat. Application for survey should be made by the entryman to the regional forester of the region in which the land lies, and upon execution of same and filing of the approved plat in the district land office a copy of same will be sent to the entryman for posting upon the land during the period of publication, and upon receipt of his plat the entryman may apply to submit proof. (Par. 10, Circ. 263, May 2, 1922, 49 L.D. 11)

170.11 Commutation not allowed; requirements for proof. The commutation provisions of the homestead laws do not apply to entries made under the Act of June 11, 1906, but all entrymen must make final proof of residence and cultivation within the time, in the manner and under the notice prescribed by the general provisions of the homestead laws, except that all entrymen who are required by secs. 170.8-170.10 to have their lands, or any portion of them, surveyed must, within 5 years from the date of their settlement, present to the manager their application to make final proof of all of the lands embraced in their entries.

Entries made under the Act of June 11, 1906, are subject to the provisions of sections 2291 and 2297, Revised Statutes, as amended by the 3-year Homestead Act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218). (Par. 11, Circ. 263, May 2, 1922, 49 L.D. 12)

170.12 Requirements as to posting of final proof notice, field notes and plats, where homestead entry survey is made. In all cases where a survey of any portion of the lands embraced in an entry made under the Act of June 11, 1906 is required, the manager will, in addition to publishing and posting the usual final-proof notices, keep a copy of the final-proof notice, with a copy of the field notes and the plat of such survey attached, posted in his office during the period of publication, and the entryman must keep a copy of the final-proof notice and a copy of the plat of his survey prominently posted on the lands platted during the entire period of publication of notice of intention to submit final proof, and at the same time his final proof is offered he must file a statement showing the date on which the copies of the notice and plat were posted on the land and that they remained so posted during such period, giving dates. (Par. 12, Circ. 263, May 2, 1922, 49 L.D. 12; Circ. 1689, July 28, 1948)

170.13 Description of land by metes and bounds not required in proof notices. In publishing the notice of intention to submit final proof on entries for lands covered by homestead entry surveys the survey number should not be followed by the description by metes and bounds. The purpose of such ommissions is to avoid a lengthy description, the cost of which often causes a real hardship to the entryman.

As a plat of the survey is posted on the land and in the district land office, it is deemed sufficient in such publications to give the homestead entry number, list number, survey number, acreage, and the approximate description by section, township, and range numbers. (Circular 1170, Oct. 12, 1928)

170.14 National forest homesteads in southern California and in the Black Hills National Forest. Section 1 of the said Act of June 11, 1906, having been amended by the Act of May 30, 1908 (35 Stat. 554; 16 U.S.C. 506), the only counties in southern California in which entries thereunder can not be made are San Luis Obispo and Santa Barbara, to which counties the Act of June 11, 1906, does not apply. Entries made of lands in the Black Hills National Forest can be made only under the terms and upon the conditions prescribed in sections 3 and 4 of the Act of June 11, 1906, as amended by the Act of February 8, 1907 (34 Stat. 883), and the Act of July 3, 1912 (37 Stat. 188). (Par. 13, Circ. 263, May 2, 1922, 49 L.D.12)

170.15 Classification and listing for homestead entry of land in Custer National Forest. The Act of June 13, 1930 (46 Stat. 583; 16 U.S.C. 510a) prohibits the acceptance by the Secretary of Agriculture of applications for classification and listing for homestead entry of Custer National Forest lands. The proviso of the Act, however, vests in that officer discretionary authority to list limited tracts in that forest when in his opinion such action will be in the public interest and will not be injurious to other settlers or users of the national forest. (Circ. 1227, July 22, 1930, 53 I.D. 153)

170.16 Conditions governing homestead settlements. The Act of June 11, 1906, does not authorize any settlements within forest reserves except upon lands which have been listed, and then only in the manner set forth in secs. 170.1 - 170.15, and all persons who attempt to make any unauthorized settlement within such reserves will be considered trespassers and treated accordingly. (Par. 14, Circ. 263, May 2, 1922, 49 L.D. 12)

170.17 Claims initiated prior to establishment of forest protected. The Act of June 11, 1906, provides that nothing shall be done to impair in any way the legal rights of any bona fide homestead settler who has or shall establish residence upon public lands prior to their inclusion within a forest reserve and maintains his settlement claim as required by law. (Par. 15, Circ. 263, May 2, 1922, 49 L.D. 12)

Office Copy

Obsolete

See No. 1781

Circular No. 1729

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43 - PUBLIC LANDS: INTERIOR
CHAPTER I - BUREAU OF LAND MANAGEMENT

Part 191--General Regulations Applicable to Permits, Leases and Licenses (Parts 192-198)

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191.1 Purpose of the leasing acts.
191.2 Lands and deposits to which mineral leasing act does not apply.
191.3 Who may hold leases and permits.
191.4 Rights of Aliens.
191.5 Reserved or segregated lands.
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191.7 Multiple development, or other disposition of land.
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Sec.
191.10 Simultaneous applications for lease.
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191.14 Bonds with individual surties.
191.15 Reinstatement of rejected applications for lands restored from withdrawal or use for War purposes.
191.25 Waiver, Suspension, or reduction of rental or minimum royalty or reduction of royalty on Mineral leases.
191.26 Suspension of operations and production and suspension of rental payments.
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191.40 Leases to Governmental agency or its assigns/

Reprint, April 1949, of Circular No. 1623, October 28, 1946, as amended by Circular No. 1623a, June 6, 1947, Circular No. 1655, September 5, 1947, Circular No. 1696, September 17, 1948, Circular No. 1723, January 19, 1949, and Circular No. 1727, April 5, 1949.

AUTHORITY: Sec. 191.1 to 191.27 and sec. 191.40 issued under 41 Stat. 450,44 Stat. 302, 44 Stat. 1058, 30 U.S.C. 189, 275, 285, act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181 et. seq.).

General Provisions

Section 191.1 Purpose of the leasing acts. The act of February 25, 1920 (41 Stat. 437; 30 U.S.C. sec. 181), as amended and supplemented, including the amendatory act of August 8, 1946 (Public Law 696, 79th Congress); the act of February 7, 1927 (44 Stat. 1057; 30 U.S.C. 281-287) and the act of April 17, 1926 (44 Stat. 301; 30 U.S.C. 271-276) as amended, hereinafter called "the act," provide for the leasing of oil and gas, coal potassium, sodium, phosphate and oil shale and lands containing such deposits owned by the United States in the public domain and deposits of sulphur and the public lands containing such deposits in the States of Louisiana and New Mexico, except as stated in sec. 191.2[1/] (Circ. 1623, Oct. 28, 1946)

191.2 Lands and deposits to which mineral leasing act does not apply. The mineral leasing act does not apply (a) to lands containing the mineral deposits named in sec. 191.1 where such lands are situated in (1) national parks and monuments; (2) Indian reservations; (3) incorporated cities, towns and villages, or (4) naval petroleum and oil shale reserves; nor (b) to lands aquired under the act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513-519) known as the Appalachian Forest Reserve Act, or other acquired lands. (Circ. 1623, Oct. 28, 1946)

191.3 Who may hold leases and permits. Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, muncipalities. A mineral lease or permit will not be issued to a minor. (Circ. 1623, Oct. 28, 1946; Circ. 1723, Jan. 19, 1949)

191.4 Rights of Aliens. Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases, if the laws of their country do not deny similar or like priveleges to citizens of the United States. A corporation is required to file a certified copy of its articles of incorporation and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating

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[1/] Coal deposits in Alaska are not covered by these acts but may be disposed of under the act of October 20, 1914 (38 Stat. 742, 48 U.S.C. 434), as amended by the act of March 4, 1921 (41 Stat. 1363, 48 U.S.C. 444), relating solely to Alaska, and the regulations in sec. 70.2 to 70.29 of this chapter.

which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all the stock, is owned or controlled by or on behalf of such persons; the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied. (41 Stat. 450, 44 Stat. 302, 1058; 30 U.S.C. 189, 275, 285). (Circ. 1727, April 5, 1949)

191.5 Reserved and segregated lands. With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Director, Bureau of Land Management, for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated. (Circ. 1623, Oct. 28, 1946)

191.6 Special stipulations for lands in national forests and reclamation projects. Applicants for permits, leases and licenses for lands in national forests will be required to consent to the inclusion therein of the stipulation on Form 4-216. Where the land has been withdrawn for reclamation purposes the applicant may be required to consent to the inclusion of a stipulation to Form 4-467 if the lands are potentially irrigable, or Form 4-467(a) if the lands are within the flow limits of a reservoir site, or Form 4-467(b) if the lands are within the drainage area of a constructed reservoir. Other conditions may be imposed, if deemed necessary, to protect the lands withdrawn for reclamation pruposes. (Circ. 1623a, June 6, 1947)

191.7 Multiple development, or other dispostion of land. The granting of a permit or lease for the prospecting, development or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations or selections of the leased lands with a reservation of the mineral deposits to the United States. (Circ. 1623, Oct. 28, 1946)

191.8 Interests held in common. An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportinat interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permitte for the particular mineral deposit so held will be permitted. (Circ. 1623a, June 6, 1947)

191.9 Survey of lands for leasing. Unsurveyed lands containing oil shale, and unsurveyed lands embraced in applications for lease based upon discovery of valuable deposits of potassium, sodium or sulphur under prospecting permit, must be surveyed by the Government at the expense of the applicant prior to the issuance of a lease of the lands. To secure such a survey, the applicant must obtain from the appropriate regional cadastral engineer an estimate of the cost of the survey and deposit with him the estimated amount. After the survey has be accepted and the plat filed in the district land office the application will be adjusted to the resulting subdivisions and the cost of the survey will be ascertained by prorating the total cost of surveying the township to the area to be leased. The amount thus ascertained will be credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor or his authorized representative. The survey of unsurveyed lands for any coal lease, or for a competitive lease for phosphate, potassium, sodium, oil, or gas, or sulphur will be made at the expense of the Government prior to the issuance of a lease of the lands. (Circ. 1696, Sept. 17, 1948)

191.10 Simultaneous applications for lease. Where applications received by mail or filed over the counter at the same time are in conflict the right of priority of filing will be determined by public drawing in the manner provided in sec. 295.8 (d) of this chapter. Notice of the conflict and of the date and hour of the drawing shall be mailed to each applicant five days prior to such date and the manager will post notice showing the date and hour of the drawing in a conspicuous place in his office for a period of five days prior to such date. (Circ. 1623, Oct. 28, 1946)

191.11 Filing Fees. Effective March 1, 1949, all applications for prospecting permits, licenses, or noncompetitive leases, excepting phosphate lease applications, must be accompanied by a filing fee of $10.00 for each application. Such fees will be retained as a service charge even though the application should be rejected or withdrawn in whole of in part. (Circ. 1723, Jan. 19, 1949)

191.12 Disposition of fees. Note. Sec. 191.12 was deleted by Circ. 1723, Jan. 19, 1949.

191.13 Payments of rentals and royalties. Rentals and royalties under all leases and permits issued under the act shall be paid to the manager of the district land office for the land district in which the leased lands are situated. In States where there are no district land offices such payments shall be filed with the Director, Bureau of Land Management. All remittances shall be made payable to the Treasurer of the United States and shall be accompanied by a letter of transmittal on Form 4-974 (oil and gas) or Form 4-976 (coal, potash, etc.). The transmittal letter shall be in triplicate and shall be completely filled out and signed by the payer. (Circ. 1623, Oct. 28, 1946)

191.14 Bonds with individual surties. Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the United States Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located. There also must be furnished a certificate by a judge or clerk of a court or record, a United States attorney, a United States Commissioner, or a United States postmaster, as to the identity, signature, and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on Form 4-215. (Circ. 1623, Oct. 28, 1946)

191.15 Reinstatement of rejected applications for lands restored from withdrawal or use for War purposes. Hereafter, upon publication of a revocation of a withdrawal or of a use permit made or granted in connection with the prosecution of World War II, a mineral permit or lease applicant whose application was rejected solely because of the subsequent withdrawal of the land for use in connection with the prosecution of the war or because, either before or after the application was filed, a permit was granted to use the land for war purposes, may apply for and obtain a reinstatement of his application. If the application for reinstatement is for lands restored from a withdrawal it must be filed prior to the date fixed for the filing of applications by the general public; if for land affected by the revocation of permits, within 60 days from the date of publication of such revocation. No application for reinstatement will be considered unless it is timely filed and accompanied by the proper filing fee and the full amount of the first year's rental. (Circ. 1655, Sept. 5, 1947)

Royalty and Rental Relief; Suspension of Operations and Production.

191.25 Waiver, Suspension, or reduction of rental or minimum royalty or reduction of royalty on Mineral Leases. In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, oil shale, oil, or gas and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

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An application for any of the above benefits shall be filed in triplicate in the office of the oil and gas supervisor for oil and gas leases or the office of the mining supervisor for coal, phosphate, potassium, sodium, oil shale and sulphur leases. It must contain the serial number of the leases, the land district the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

Each application involving coal, phosphate, potassium, sodium, oil shale and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells or mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amount so paid and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties. (Circ. 1696, Sept. 17, 1948)

191.26 Suspension of operations and production and suspension of rental payments. When the Secretary of the Interior in the interest of conservation directs or assents to the suspension of all operations and production on any lease issued under the act no payment of acreage rental or minimum royalty prescribed in the lease is required during such period of suspension. Any such suspension if granted shall be effective beginning with the first day of the lease month following the date of filing of written application for such suspension in triplicate in the office of the oil and gas supervisor for oil and gas leases and the mining supervisor for all other mineral leases, and ending with the first day of the lease month in which relief is terminated in writing by the Secretary of the Interior or the respective supervisor. Where rentals have been paid in advance proper credit will be allowed on the next rental or royalty payment due under the lease. Complete information must be furnished showing the necessity for suspension of operation and production in the interest of conservation.

As to oil and gas leases, no suspension of operations and production and consequent suspension of rentals will be granted on any lease in the absence of a well capable of production on the leasehold except where the Secretary directs a suspension of operations in the interest of conservation.

The term of a lease shall be extended by adding thereto any period of suspension of operations and production assented to or directed by the Secretary of the Interior.

The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, oil shale or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation. (Circ. 1623, Oct. 28, 1946; Circ. 1696, Sept. 17, 1948)

191.27 Applicability of relief. The relief autorized under sec. 191.25 and 191.26 may also be obtained for any oil and gas leases included within and approved unit or cooperative plan of development and operation. (Circ. 1623, Oct. 28, 1946)

Leasing of Minerals Developed by Governmental Agency to aid in Prosecuting World War II

191.40 Leases to Governmental agency or its assigns. Except as otherwise provided by law, any mineral deposits (other than for oil and gas) and public lands containing such deposits which are subject to disposition under the provisions of the act, the production from which has been used by any Federal agency in connection with prosecution of World War II, may be leased to the agency controlling the facilities using such production, or to any purchaser or lessee of such facilities, by negotiation, or by requiring the agency, its purchaser or lessee to meet the highest competitive bid received under sealed bids for such lease. (Circ. 1623, Oct. 28, 1946)

Note: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Acts of 1942

Circular No. 1730

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

See #1840

CODE OF FEDERAL REGULATIONS
TITLE 43 - PUBLIC LANDS: INTERIOR
CHAPTER 1 - BUREAU OF LAND MANAGEMENT

PART 192 - OIL AND GAS LEASES

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Reprint April, 1949 of Circular No. 1624, October 28, 1946, as amended by Circular 1624a, June 6, 1947, Circular No. 1650, July 24, 1947, Circular No. 1662, October 29, 1947, Circular No. 1686, June 25, 1948, Circular No. 1719, December 29, 1948, and Circular 1727, April 5, 1949.

AUTHORITY: Sec. 192.1 to 192.161, issued under 41 Stat 450, 30 U.S.C. 189; act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181 et seq.).

GENERAL PROVISIONS[1]

Section 192.1 Applicability of amendatory act to existing leases. Prior to the filing of the notice of election hereinafter referred to the act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181 et seq.) applies to leases issued prior to the date of that act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder. /Circ. 1719, Dec. 29, 1948/

192.2 Helium. The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium. /Circ. 1624, Oct. 28, 1946/

192.3 Acreage limitations on leases. No person, association, or corporation, except as in the act provided, may hold more than 15,360 acres in any one state, whether directly through the ownership of leases or interests in leases; or indirectly as a member of an association, or associations, or as a stockholder of a corporation, or corporations, holding leases or interests therein or both. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior and all operating, drilling, or development agreements approved under section 17 (b) of the act, other than communitization agreements, and all leases issued under sections 18 and 19 of the act shall not be included in computing accountable acreage under section 27 of the act.

In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

No lease will be issued and no assignment will be approved until it has been shown pursuant to the requirements of sec. 192.42 (a)(2) and (a)(3) that the lessee or assignee is entitled to hold the acreage. Any party found to hold or control accountable acreage computed in accordance with the principles above set forth in excess of the prescribed limitations shall be given thirty days within which to file proof of the reduction of his holdings or control so as to conform with the prescribed limitation. /Circ. 1624, Oct. 28, 1946; Circ. 1719, Dec. 29, 1948/

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[1] Until an election is filed as provided for in the regulations in this part leases issued prior to August 8, 1946 shall continue to be governed by the pertinent provisions of the regulations in this part theretofore in force as well as by the regulations in this part to the extent that they are applicable.

192.4 Acreage limitations on options. (a) Acreage held under a non-renewable option, valid only for two years or such longer period as may be authorized by the Secretary, for the purpose of geological or geophysical exploration, shall not be chargeable under sec. 192.3, but no optionee, except as permitted by the act of August 8, 1946, may hold options at any one time for more than 100,000 acres in any one State.

(b) No such option shall be taken for more than two years without the prior approval of the Secretary of the Interior, except that an option hereafter taken on a lease application may be for the period of time until issuance of the lease and two years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the Director, Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application by the Secretary.

(c) Within the meaning hereof, options may be taken only on lands embraced in leases or applications for leases and the acreage included in any such option taken upon an application or a lease shall be chargeable from and after the date of such option.

(d) It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in sec. 192.20) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the two-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

(e) No acreage shall be chargeable under options taken prior to June 1, 1946, on which geological or geophysical exploration has been actually made if exercised prior to August 9, 1948, but no such option not so exercised will be recognized by the Department, thereafter, for any purpose.

(f) Each optionee must file with the Director, Bureau of Land Management, within 90 days after December 31 and June 30 of each year, commencing with the year ending December 31, 1946, a statement under oath showing as of the prior December 31 and June 30, respectively, (1) name of optionor and serial number of lease or application for lease subject to the option, (2) date and expiration date of each option, (3) number of acres covered by each option, and (4) aggregate number of options held in each state and total acreage thereof.

(g) If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act. /Circ. 1624, Oct. 28, 1946; Circ. 1624a, June 6, 1947; Circ. 1686, June 25, 1948/

192.5 Lands within one mile of naval petroleum or helium reserves. No application for an oil and gas lease under the act will be granted for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the Secretary, after consultation with the head of the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons. /Circ. 1624, Oct. 28, 1946/

192.6 Boundaries of known geologic structures and productive limits of producing oil or gas fields and deposits. The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946. Maps or diagrams showing the boundaries of known geologic structures of producing oil or gas fields and of the productive limits of producing oil or gas deposits will be placed on file in the appropriate district land office, and office of the oil and gas supervisor. Any lessee or his operator may apply to have a determination made as to whether or not the land upon which he intends to drill a well is inside or outside the productive limits of a producing oil or gas deposit. The application should be accompanied by all available geologic data which in his opinion have a bearing on the matter. /Circ. 1624, Oct. 28, 1946/

192.7 Agreements to compensate for drainage. Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the Director, Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case. /Circ. 1624, Oct. 28, 1946/

192.8 Protection of leased lands from drainage. Where land in any lease is being drained of its oil or gas content by well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR sec. 221.21.

A period equal to that for which compensatory royalty is paid in lieu of drilling on any Federal lease under this or the preceding section shall be added to its primary term where there is no producing well on the lease. /Circ. 1624, Oct. 28, 1946; Circ. 1650, July 24, 1947/

192.9 Leases for wildlife refuge lands. No noncompetitive oil and gas lease under the act will be issued for lands within a wildlife refuge (a) unless these lands are subjected to an approved cooperative or unit plan, and (b) unless the lease contains a provision which prohibits drilling or prospecting on the refuge lands except when consented to by the Secretary of the Interior upon the advice of the Fish and Wildlife Service. Subject to the same two conditions, competitive leases also may issue for refuge lands. Even if these conditions are not met, competitive leases may nevertheless issue if Fish and Wildlife Service reports that oil and gas development may be conducted without destroying the usefulness of the lands as a sanctuary for wildlife, or, in the absence of such a report, wherever the Secretary determines that the national interest in securing the contemplated oil and gas production outweighs the importance of maintaining the refuge as a sanctuary for wildlife. (Sec. 32, 41 Stat. 450, 30 U.S.C. 159). /Circ. 1662, Oct. 29, 1947/.

Cooperative Conservation Provisions

192.20 Cooperative or unit plans.[2] The act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation). The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges. /Circ. 1624, Oct. 28, 1946/

192.21 Application for approval of plan. The procedure in obtaining approval of a cooperative or unit plant of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226, "Unit or Cooperative Agreement". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey, for the region in which the unit area is situated. /Circ. 1624, Oct. 28, 1946/

192.22 Communitization or drilling agreements. The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for lease or any portion thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

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[2] For the extension of leases committed to a unit plan, see sec. 192.122.

Preliminary requests to communitize separate tracts shall be filed in triplicate with the oil and gas supervisor and executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein. /Circ. 1624, Oct. 28, 1946/

192.23 Approval of operating, drilling or development contracts without regard to acreage limitations. The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipe-line companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

A contract submitted for approval under this provision should be filed with the Director, Bureau of Land Management, together with enough copies to permit retention of 5 copies by the Department after approval. It should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made. /Circ. 1624, Oct. 28, 1946/

192.24 Combinations for joint operation of refinery, or for transportation of oil. Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases. An application under this section, together with enough copies to permit retention of 5 copies by the Department after approval, should be filed with the Director, Bureau of Land Management. The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.[3] /Circ. 1624, Oct. 28, 1946/

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[3] Rights-of-way for oil and gas pipe lines may be granted as provided for in sec. 244.56 to 244.61 of this chapter.

192.25 Subsurface storage of oil of gas. In order to avoid waste or to promote conservation of natural resources, the secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the parties in interest shall be sybmitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval. /Circ. 1624, Oct. 28, 1946/

Issuance of Leases

192.40 Classes and term. All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field, such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12 1/2 per cent. Leases for not to exceed 2,560 acres, in reasonably compact form, may be issued for all otherland subject to the act to the first qualified applicant at a royalty of 12 1/2 per cent. No single lease will be issued embracing lands which cannot be included within a six mile square area. Where an application covers tracts which cannot be so contained two or more leases, as may be necessary, will be issued. The right is reserved to suspend, or reject in whole or in part, applications involving scattered tracts considerably more than six miles apart. Hereafter, all leases, except those issued as renewals of 20 year leases, will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities. /Circ. 1624a, June 6, 1947/

192.40a Dating of competitive and noncompetitive oil and gas leases. All competitive and noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed. /Circ. 1719, Dec. 29, 1948/

192.41 Leases for lands wholly or partly within unit areas. Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement, If such statement is acceptable he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

In case an application for lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found allowable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area. [Circ. 1624, Oct. 28, 1946]

Noncompetitive Leases

192.42 Applications for noncompetitive leases.[4] Applications for noncompetitive leases may be filed in the proper district land office, or, for lands or deposits in States in which there is no district land office, in the Bureau of Land Management, addressedto the Director of the Bureau of Land Management, Washington, D. C. All applications must be filed in duplicate and must be accompanied by the filing fee prescribed in sec. 191.11 of this chapter and at least one-half of the first year's rental. After March 1, 1949, each application must be accompanied by the full rental payment for the first year. Any application not accompanied by the required fee and rental payment will be rejected. No specific form of application is required and no blanks will be furnished. An application executed by an attorney in fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. A lease executed by an attorney in fact in behalf of the applicant must be accompanied by evidence of the attorney's authority to execute the lease. Proof of the authority of the officer who makes application in behalf of a corporation must be furnished. An application by a minor will be rejected.

(a) The application must contain in substance the following:

(1) The applicant's name and address

(2) A statement as to citizenship; in case of an individual whether native-born or naturalized, and, if naturalized, the date of naturalization, the court in which naturalized, and the number of the certificate, if known; if a woman, whether she is married or single, and, if married, the date of her marriage and the citizenship of her husband. A corporation is required to file a certified copy of its articles of incorporation and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock

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[4] Title 18 U.S.C. sec. 1001 makes it a crime for any person knowingly or willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement as to any matter within its jurisdiction.

having voting rights. If more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied. If 20 percent or more of the stock of any class is owned or controlled by or on behalf of any one stockholder a separate showing of his citizenship and holdings must be furnished. (41 Stat. 437, 450, 44 Stat. 1058, 60 Stat. 950, 957; 30 U.S.C. 181, 189.) [Circ. 1727, April 5, 1949]

(3) A statement of the interests, direct or indirect, held by the applicant in oil and gas leases issued under the act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended, and applications for such leases, covering lands in the same State, identifying by serial number the records wherein such interests may be found, together with a statement that such interests, with the acreage applied for do not exceed in the aggregate 15,360 acres in the State.

(4) Description of the lands for which a lease is desired, describing the lands by legal subdivisions or, if unsurveyed, by metes and bounds description connected with a corner of the public surveys by courses and distances, and where possible, a description of the land by approximate legal subdivisions of the future survey. Each application shall be for one lease only, which may not exceed 2,560 acres except where the rule of approximation applies.

(5) A statement that the applicant is ready upon demand to furnish such bond or bonds as may be required under the lease or regulations.

Where any required information or statements are already on file with the Department, the showing required by these regulations may to that extent be made by approximate reference to the information or statements already on file.

(b) If an applicant dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not contemplated, to the heirs or devisees: Provided, That there is filed:

(1) Where probate of the estate has not been completed:
(i) Evidence that the person who as executor or administrator signs the lease forms, and bond form if a bond is required, has authority to act in that capacity and to sign the lease and bond forms.
(ii) A statement over the signature of each heir or devisee, similar to that required under paragraphs (a) (2) and (a)

(3) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devises are the heirs or devisees are the heirs or devisees of the deceased applicant and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are contemplated:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (a) (2) and (a) (3) of this section. [Circ. 1719, Dec. 29, 1948]

192.43 Opening of lands to further filings, where a noncompetitive oil and gas lease is canceled or relinquished. Where a noncompetitive lease is canceled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancellation or relinquishment on the tract book of the district office or on the tract book of the Bureau of Land Management if there is no district office in the State, the lands shall be open to further oil and gas leasing. Applications received in the same mail or over the counter at the same time, will be considered simultaneously filed and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the procedure prescribed sec. 295.8 of this chapter. [Circ. 1719, Dec. 29, 1948]

192.44 Form of lease. Noncompetitive leases will be executed on Form 4-213 and the rentals and royalties payable thereunder will be set forth in Schedule A affixed thereto and made a part thereof. [Circ. 1624, Oct. 28, 1946]

Competitive Leases

192.50 Designation and offer of lands for lease by competitive bidding. The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible, and offered for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale. [Circ. 1624, Oct. 28, 1946]

192.51 Notice of lease offer. Notice of the offer of lands for lease will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the Director, Bureau of Land Management may authorize. The notice will be published at the expense of the Government. A copy of the notice will be posted in the district land office during the period of publication. Such notice will set the day and hour of sale and will state whether the lease is offered by sealed bids or at public auction. If by public auction, the offer will be made at the land office of the district in which the lands are situated, or at such other place as may be fixed in the notice. If by sealed bids, full information will be given as to how and when bids are to be submitted. All bidders are warned against violation of the provisions of section 59 of the United States Criminal Code, approved March 4, 1909 (35 Stat. 1099; 18 U.S.C. 113), prohibiting unlawful combination or intimidation of bidders. [Circ. 1624, Oct. 28, 1946]

192.52 Qualifications of successful bidder. The successful bidder at a sale by public auction must deposit with the manager of the district land office or other officer conducting the sale on the day of sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him; proof of citizenship as required in sec. 192.42 (a) (2) and a statement of interests held in leases and applications therefor as required in sec. 192.42 (a) (3). [Circ. 1624, Oct. 28, 1946, Circ. 1719, Dec. 29, 1948]

192.53 Award of lease: Following receipt of the report of the auction from the manager, or the opening of the sealed bids, the Director, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office. If the lease be awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of his bonus bid, the first year's rental, and file a bond as required in sec. 192.100. If any bid be rejected, the deposit will be returned. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and sisposed of as other receipts under this act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

If two or more units are awarded to any bidder, such units, where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant. [Circ. 1624, Oct. 28, 1946; Circ. 1719, Dec. 29, 1948

192.54 Form of lease. Competitive leases will be issued on Form 4-213 and the rentals and royalties payable thereunder will be set forth in Schedule "B" affixed thereto and made a part thereof. [Circ. 1624, Oct. 28, 1946]

Exchange and Renewal Leases

192.60 Application to exchange lease of a new lease. Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in sec. 192.80, 192.81 and 192.82. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate district land office and must show full compliance by the applicant with the terms of the lease and applicable regulations. [Circ. 1624, Oct. 28, 1946]

192.61 Application for renewal. Twenty year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in secs. 192.80, 192.81 and 192.82. An application to renew should be filed in triplicate with the manager of the district land office in which the leased land is located or if in a State in which there is no district land office, in the Bureau of Land Management at least 90 days, but not more than six months, prior to the expiration of its term. Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

The applicant or his operator shall furnish in triplicate with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 percent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.
[Circ. 1624, Oct. 28, 1946]

192.62 Action on application. If the outstanding obligations in excess of five percent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any leave that may be issued will be upon the condition, to be incorporated in the lease, that if and when the costs of operations, including the payment of overriding royalties or payments out of production, shall be determined by the Directr, Bureau of Land Management, to constitute such a burden such royalties and payments shall be reduced to not more than 5 per cent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

If a determination is made that overriding royalties and payments out of production in excess of 5 per cent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended, and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 per cent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.
[Circ. 1624, Oct. 28, 1946]

192.63 Form of lease. Renewal and exchange leases will be issued on Form 4-213. The rentals and royalties payable thereunder will be set out on Schedule C or D as may be appropriate, which schedule is attached thereto and made a part thereof.
[Circ. 1624, Oct. 28, 1946]

Leases on Patented or Entered Land

192.70 Preference right of patentee or entryman to a lease. An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified or is known to contain oil or gas, also has such a preference right.

Any applicant for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the application and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper application within the 30 day period he will be awarded a lease, but if he fails to do so, his rights will be considered to have terminated. [Circ. 1624, Oct. 28, 1946]

192.71 Lands in entries or claims not impressed with a reservation of oil and gas. Where an application is filed to lease lands in an entry or settlement claim not impressed with an oil or gas reservation, the application will be rejected unless it is found that the land is prospectively valuable for oil or gas. An applicant for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective applications or showings as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be required to consent to a reservation of the oil or gas to the United States or to contest the mineral finding. If he does neither the entry will be canceled or his settlement rights denied. If he consents, or contests the finding and is unsuccessful, a lease will be granted to the applicant, unless the entryman or settler has a preference right, but if the entryman or settler prevails in a contest, the application will be rejected. [Circ. 1624, Oct. 28, 1946]

192.72 Showing required of oil and gas applicants for unsurveyed lands. Every applicant for oil and gas lease for unsurveyed lands, must state in his application that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.
[Circ. 1624, Oct. 28, 1946]

Rentals and Royalties

192.80 Rentals. Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued under section 17 of the act, wholly outside of the known geologic structure of a producing oil or gas field:

(1) For the first lease year, 50 cents per acre.

(2) For the second and third lease years, no rental.

(3) For the fourth and fifth years, 25 cents per acre.

(4) For the sixth and each succeeding year, 50 cents per acre.

(b) On leases wholly or partly within the geologic structure of a producing oil or gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a unit plan, beginning with the first lease year after the expiration of thirty days notice to the lessee that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the leased lands, rental of $1 per acre.

(2) If issued noncompetitively under section 17 of the act and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production for lands not within the participating area, an annual rental of 50 cents per acre for the first and each succeeding lease year following discovery.

(3) If issued competitively, an annual rental, prior to a discovery on the leased lands, of $1 per acre unless a different rate of rental is prescribed in the lease.

(c) On leases issued in any other way an annual rental of $1 per acre.
[Circ. 1624, Oct. 28, 1946]

192.81 Minimum royalty. On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a minimum royalty of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year.
[Circ. 1624, Oct. 28, 1946]

192.82 Royalty on production. (a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ per cent on noncompetitive leases thereafter issued under section 17 of the act.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ per cent on all leases theretofore issued, except competitive leases and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease, and which is determined by the Director, Geological Survey, to be a new deposit.

(111) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 per cent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.
Over 110 but not over 130 the royalty shall be 18% of all production.
Over 130 but not over 150 the royalty shall be 19% of all production.
Over 150 but not over 200 the royalty shall be 20% of all production.
Over 200 but not over 250 the royalty shall be 21% of all production.
Over 250 but not over 300 the royalty shall be 22% of all production.
Over 300 but not over 350 the royalty shall be 23% of all production.
Over 350 but not over 400 the royalty shall be 24% of all production.
Over 400 the royalty shall be 25% of all production

(ii) On gas, including inflammable gas, helium, cabon dioxide, and and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16 2/3 percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR, Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality

in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.
[Circ. 1624, Oct. 28, 1945]

192.83 Limitation of overriding royalties. Any agreement to create overriding royalties or payments out of the production of any lease which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess of 17½ per cent shall be deemed a violation of the terms of the lease unless such agreement expressly provides (a) that the obligation to pay such excess overriding royalties or payments out of production will be suspended and not be effective during any periods when the average production per well per day is 15 barrels or less, and (b) that such suspension will apply separately to any zone or portion of a lease segregated for computing Government royalty.
[Circ. 1624a, June 6, 1947]

Bonds

192.100 Amount of bonds required of lessee. The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $1 per acre annual rental but in no case less than $1,000 nor more than $5,000, conditioned on compliance with all the terms of the lease, and such a bond must also be filed when all or any part of the land in a lease issued non-competitively is included within the limits of a known geologic structure of a producing oil or gas field.

Until a general lease bond is filed a noncompetitive lessee will be required to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights. In all other cases where a bond is not otherwise required, a $1,000 bond must be filed for compliance with the lease obligations not less than 90 days before the due date of the next unpaid annual rental, but this requirement may be successively dispensed with by payment of each successive annual rental not less than 90 days prior to its due date.

All leases shall provide that where a $5,000 bond is not already being maintained a general lease bond in the penal sum of $5,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by the lessee prior to the beginning of drilling operations. An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $5,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bonds affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice. Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in sec. 191.14 of this chapter may be furnished for the protection of the entryman or owner of surface rights. Personal bonds must be accompanied by a deposit of negotiable

Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

192.101 Form of bonds. Bonds furnished by lessees will be on form 4-208g; those furnished by operators on form 4-238. [Circ. 1624, Oct. 28, 1946; Circ. 1719, Dec. 29, 1948]

Continuation or Extension of Lease[5]

192.120 Single extension as to lands not in a production field. The record title holder of any noncompetitive lease, as to which a notice of election has been filed pursuant to section 15 of the act of August 8, 1946, or which was issued after the passage of that act, maintained in compliance with the law, and the regulations of this part, by filing his application therefor within the period of 90 days prior to the expiration date of the lease, may obtain a single extension of the primary term of the lease for additional five years, unless then otherwise provided by law, as to all of the leased lands or any legal subdivision thereof which, on the expiration date of the lease, are not within the known geologic structure of any producing oil or gas field or have not been withdrawn from leasing. A withdrawal, however, will prevent an extension only (a) if notice thereof was mailed to the lessee by registered mail at least 90 days prior to the expiration date of the lease and (b) if actual drilling operations on the leased lands were not commenced prior to the effective-date of such withdrawal; or, if so commenced, have not been diligently prosecuted until and including such expiration date. [Circ. 1624, Oct. 28, 1946].

192.121 Continuation of lease as to lands within producing fields and on termination of production. (a) Any noncompetitive lease or portion thereof which is not subject to a single extension of five years solely because the lands are within the known geologic structure of a producing oil or gas field at the date of expiration of the primary term of the lease shall continue in effect for a period of two years from the expiration date of the primary term of the lease where drilling operations are being diligently prosecuted on such date and, upon discovery, for so long thereafter as oil or gas is produced in paying quantities.

(b) Any lease issued under the act upon which production is had during its primary term or any extensions thereof, shall not terminate when the production ceases if diligent drilling operations are in progress on the leased land during the period of nonproduction. [Circ. 1624, Oct. 28, 1946]

192.122 Extension for term of cooperative or unit plan. Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

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[5] For extension of lease (a) because of suspension of operations and production, see sec. 191.26 of this chapter; (b) by payment of compensatory royalty, see sec. 192.8; (c) committed to communitization or drilling agreement, see sec. 192.22; (d) used for subsurface storage, see sec. 192.25; (e) segregated by assigbment, see sec. 192.144.

Any other lease issued under any section of the act committed to any such plan that contains a general provision for the allocation of oil or gas shall continue in effect as to the land committed so long as the lease remains subject to the plan, provided oil or gas is discovered under the plan prior to the expiration date of the primary term of such lease. /Circ. 1624, Oct. 28, 1946/

192.123 Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement. Any lease or portion thereof eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities. /Circ. 1624, Oct. 28, 1946/

192.130 Preference right to a new lease. Upon the expiration of its five year term the record title holder of a noncompetitive lease issued prior to August 8, 1946 and maintained in good standing, who has not filed a notice of election pursuant to section 15 of the act of August 8, 1946, may apply for a new lease for the same land pursuant to the provisions of section 1 of the act of July 29, 1942 (56 Stat. 726, 30 U.S.C. sec. 226b), provided the leased land is not then within the known geologic structure of a producing oil or gas field. Any lease issued under this section will be for a period of five years and so long thereafter as oil or gas is produced as provided in section 17 of the act and will be subject to the rules and regulations then in force.

To obtain such a new lease, the lessee must, within the period beginning 90 days prior to the date of expiration of the lease and ending on the date of expiration, submit an application in accordance with sec. 192.42, accompanied by a proper filing fee and the first year's rental of 50 cents per acre or fraction thereof. /Circ. 1624, Oct. 28, 1946/

Assignment or Transfers

192.140 Assignments or transfers of leases or interests therein. Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. Subject to final approval by the Director, Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by secs. 191.141 and 192.142. No assignment will be approved if the assignee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved. An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence. /Circ. 1624, Oct. 28, 1946; Circ. 1719, Dec. 29, 1948/

192.141 Requirements for filing of operating agreements, assignments or transfers. All instruments of transfer of a lease or of an interest therein, including assignments of record title, working, or royalty interests, operating agreements and subleases, must be filed for approval within 90 days from the date of final execution and ~~must contain all~~ of the terms and conditions agreed upon by the parties thereto, together with evidence of the qualifications of the operator, assignee or transferee, consisting of the same showing required of a lease applicant by sec. 192.42 (a) (2) and (a) (3). An application for approval of any such instrument, except those concerning royalty interests, must be accompanied after March 1, 1949, by a fee of $10.00 and an application thereafter, not accompanied by a certified check, money order or cash of that amount, will be rejected by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application.

If a bond is necessary, it must be furnished. Where an assignment does not create separate leases, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. Assignments of record title interests must be filed in triplicate. A single executed copy of all other instruments of transfer, or of an operating agreement, is sufficient.

In order for the heirs or devisees of a deceased holder of a lease, an operating agreement or a royalty interest in a producing lease to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under sec. 192.42 (b).

The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be cancelled as provided in section 192.161 of this chapter.
/Circ. 1624a, June 6, 1947; Circ. 1719, Dec. 29, 1948/

192.142 Separate assignments required for transfer of record title to leases. A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfersto the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.
/Circ. 1624, Oct. 28, 1946/

192.143 Effect of assignment of particular tract. When an assignment is made of all or part of the record title to a portion of the acreage in a lease, the assigned acreage becomes segregated into a separate and distinct lease. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease through an application filed in his own name and the assignment after its approval will be the basis of a new record. /Circ. 1624, Oct. 28, 1946/

192.144 Extension of leases segregated by assignment. (a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases assigned out of leases which are in their extended term because of production shall continue in effect for two years and so long thereafter as oil or gas is produced in paying quantities. /Circ. 1624, Oct. 28, 1946/

192.145 Royalty interests in oil and gas leases and assignments thereof.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of the first sentence of section 27 of the Act. Assignments of such interest must be filed for record purposes in the appropriate district land offices accompanied by a showing by the assignees as to their citizenship and holdings in other oil and gas leases in the state. All assignments of royalty interests must be filed for the record, but those of 1 per cent or less will be approved only upon specific request and then only after discovery. Any assignment of 1 per cent or less if filed for record will be deemed to be valid whether formally approved or not. /Circ. 1624a, June 6, 1947/

Termination of Leases

192.160 Relinquishments of leases or portions thereof. A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid. /Circ. 1624, Oct. 28, 1946/

192.161 Cancellation of lease. Any lease not known to contain valuable deposits of oil or gas may be canceled by the Secretary of the Interior, after giving notice in accordance with section 31 of the act, whenever the lessee fails to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, if such default continues for the period prescribed in that section after service of notice thereof. Leases known to contain valuable deposits of oil or gas may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the act. /Circ. 1624, Oct. 28, 1946/

Note: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Circular No. 1731

Obsolete
Replaced by 1813

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington

CODE OF FEDERAL REGULATIONS
TITLE 43 - PUBLIC LANDS, INTERIOR
CHAPTER I--BUREAU OF LAND MANAGEMENT
PART 232 - DESERT-LAND ENTRIES

Sec.

232.1 Purpose of statutes.
232.2 States in which desert-land entry may be made.
232.3 Land that may be entered as desert land.
232.4 Who may make desert-land entry.
232.5 Quantity of lands that may be entered.
232.6 Second entry.
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Sec.

232.28 Notice of intention to make final proof.
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232.30 Submission of final proof.
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232.45 Conditions authorizing homestead proof and purchase.
232.46 Notice of allowance of relief; election to purchase.
232.47 Procedure for final proofs in relief cases.
232.48 No assignment allowed after relief has been granted.
232.49 Entries perfected by compliance with homestead law.
232.50 Residence and improvements for homestead proof.
232.51 Cultivation for homestead proof.

AUTHORITY: Sections 232.1 to 232.64 issued under R.S. 453, 2478; 43 U.S.C. 2, 1201.

Reprint to March 31, 1949.

Sec.

232.52 Homestead proof on entries in Utah and Idaho.
232.53 Heirs and devisees; reduction of cultivation.
232.54 Fees
232.55 Entries perfected by purchase.
232.56 Credit for improvements used as the basis for annual proof
232.57 Penalty for failure to make final proof and payment.
232.58 Forms of proofs.
232.59 Applications for relief; initial payment required.
232.60 Publication and proof; final payment required.
232.61 Collection of purchase money and fees; issuance of final certificate.
232.62 Amounts to be paid.
232.63 Contests.
232.64 Relinquishments.

Section 232.1 Purpose of statutes. It is the purpose of the statutes governing desert land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the western states through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

Such reclamation is often a difficult and expensive undertaking, and desert-land entrymen sometimes find serious difficulty in complying with all the requirements of the law, particularly persons who possess little capital. All claimants should restrict their entries to only that quantity of land which they can reasonably expect to reclaim, even though such area be much less than may be lawfully entered. As the more accessible and easily appropriated streams become exhausted, it becomes necessary to convey water, often for very long distances from more remote sources of supply; more elaborate and expensive systems of irrigation works are required, the cost of water rights is correspondingly increased, and individuals consequently find it necessary to unite their efforts in various forms of cooperative enterprise in order to secure the necessary capital. Nevertheless, a small tract of land, thoroughly reclaimed, with an adequate water supply obtained from a large, well-constructed irrigation system, may well be considered a very valuable piece of property, and more desirable than a larger tract only partially reclaimed or reclaimed from a small private irrigation system less permanent and efficient in character./Par. 1, Circ. 474, Dec. 18, 1928_/

Entry

232.2 States in which desert-land entry may be made. The Act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321-323), as amended by the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 321, 323, 325, 327-329) provides for the making of desert-land entries in the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. /Par. 2, Circ. 474, Dec. 18, 1928_/

232.3 Land that my be entered as desert land. As the desert land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, nonmineral (except lands withdrawn, classified or valuable for coal, phosphate, nitrate, potash, sodium, sulphus, oil, gas or asphaltic minerals, which may be entered with a reservation of such minerals deposits, as explained in Part 102), nontimbered, and such as will not without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultiviation. In this latter class are those lands which 1 year with another for a series of years, will not without irrigation produce apying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L.D. 533 and 42 L.D. 524).

Applications to make desert-land entries of lands embraced in applications, permits, or leases under the Act of February 25, 1920 (41 Stat. 437), if in all other respects complete, will be treated in accordance with sec. 102.34-102.38. Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands. /Par. 3, Circ. 474, Dec. 18, 1928 7

232.4 Who may make desert-land entry. Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States and who can truthfully make the statements specified in sec. 232.10, 232.11 can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

The citizenship of a married woman must be shown, as required by sec. 137.4.

At the time of making final proof claimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry. /Par. 4, Circ. 474, Dec. 18, 1928; Circ. 1689, July 28, 1948 7

232.5 Quantity of lands that may be entered. Under the Act of March 3, 1877, desert-land entries to the maximum of 640 acres were allowed, but by the Act of March 3, 1891, the maximum area that may be embraced in a desert entry was reduced to 320 acres. This limitation must, however, be read in connection with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 212), which limits to 320 acres, in the aggregate, the amount of land to which title may be acquired under all the public land laws, except the mineral laws, and the amendment thereof by the Act of February 27, 1917 (39 Stat. 946; 43 U.S.C. 330), allowing one who has entered 320 acres under the enlarged homestead laws to make a desert-land entry. Hence, a person having initiated a claim under the homestead, timber and stone, preemption, or other agricultural land laws, or under all such laws, since August 30, 1890, say, to 160 acres in the aggregate, or 320 acres under the Enlarged Homestead Act, and acquired title to the land so claimed, or who is claiming such an area under subsisting entries at the date of his desert-land application, may, if otherwise qualified, enter 160 acres of land under the desert land laws. In other words, he may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres. It is to be noted also that the Act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), provides that desert-land entries made for lands withdrawn or classified as coal lands, or valuable for coal, shall not exceed 160 acres in area, and that a like restriction is made by the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123), as supplemented by the Act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124) with reference to desert-land entries made for land withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable for those deposits.

Entry of lands within an irrigation district which the Secretary of the Interior has approved under the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), is limited to 160 acres. /Par. 5, Circ. 474, Dec. 18, 1928 7

232.6 Second entry. A person's right of entry under the desert land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except, however, that under the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previsously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assigner, it is held to exhaust his right of entry under the desert land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted thereafter to make another entry or to take one or any part thereof by assignment. Applications to make second entry must not be allowed by the managers, but must be forwarded by them, with appropriate recommendations, to the regional administrator in accordance with sec. 232.7, accompanied by the applicant's statement giving data from which his former application, or applications, entry, or entries may be identified (preferably its series and number, as well as a description of the tract by section, township, and range), and showing (a) what examination of the land and what inquiries as to its character he made prior to filing his previous application or applications for entry, and what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation; (b) what improvements be made upon the land, describing in detail their nature and cost, the date of his abandonment of the claim or claims and the reason therefor, and whether he ever executed a relinquishment of the entry or entries; and (c) what consideration, if any, he received for abandoning or relinquishing the entry or entries, and whether he sold the improvements thereon, giving full details as to such sale, if any, including the date thereof, and the consideration received. This statement must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts; or, there may be several witnesses, each testifying on some material point. If the regional administrator should find that the applicant is qualified to make a second entry, the application will be returned to the manager for appropriate action in accordance with sec. 232.15 (Par. 5, Circ. 474, Dec. 18, 1928; Circ. 1689, July 28, 1948; Circ. 1712, Dec. 21, 1948)

232.7 Report on application for second desert-land entry. An application for desert-land entry, accompanied by a showing for second entry on Form 4-007c, will be transmitted by the manager to the regional administrator for consideration. If upon examination of the application and second entry showing it appears that a field examination as to the applicant's qualifications to make second desert land entry should be made, such examination will be directed. (Circ. 1474, July 8, 1940, Circ. 1535, May 26, 1943; Circ. 1712, Dec. 21, 1948; Circ. 1718, Dec. 28, 1948)

232.8 Land entered must be in compact form. Land entered under the desert land laws should be in compact form, which means that it is impracticable, on account of the previous appropriation of adjoing lands or on account of the topography of the country, to take the land in a compact form all the facts regarding the situation, location and character of the land sought to be entered and the surrounding tracts should be stated, in order that the Bureau of Land Management may determine whether, under all the circumstances, the entry should be allowed in the form sought. Entrymen should make a complete showing in this regard and should state the facts and not the conclusions they derive from the facts, as it is the province of the Bureau of Land Management to determine whether or not, from the facts stated, the entry should be allowed. Under no circumstances, however, can one entry be made for two or more separate tracts or for two tracts which touch each other at only a single point. (Par. 6, Circ. 474, Dec. 18, 1928)

232.9 Entries restricted to surveyed lands since March 28, 1908; claims on unsurveyed lands, Prior to the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), a desert-land entry could embrace unsurveyed lands, but since the date of that Act desert-land entries may not be made of unsurveyed lands. This Act provides, however, that any individual qualified to make entry of desert lands under the desert land acts who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area 320 acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said Acts, in conformity with the public-land surveys, within 90 days after the filing of the approved plat of survey in the district land office. 2/

To preserve this preference right the work of reclamation must be continued up to the filing of the plat of survey, unless the reclamation of the land is completed before that time, and in that event the claimant must continue to cultivate and occupy the land until the survey is completed and the plat filed. A more perfunctory occupation of the land, such as staking off the claim or posting notices thereof on the land claimed, will not secure the preference right as against an adverse claimant. While actual settlement and residence upon the land as required under the homestead law, are not necessary, the possession and improvements must be such as to conform to the requirements of the desert land laws and must evidence good faith on the part of the claimant. (Par. 7, Cir. 474, Dec. 18, 1928)

232.10 Applicstion for desert-land entry. 3/ A person who desires to make entry under the desert-land laws must file with the manager of the proper land office an application, in duplicate, showing that he is a citizen of the United States, or has declared his intention to become such citizen; that he is 21 years of age or over; and that he is a bona fide residence of the State in which the land sought to be entered is located, except in the State of Nevada, where the qualification as to citizenship is that of the United States only (41 Stat. 1086; 43 U.S.C. 323, 325). He also must state that he has not previsouly exercised the

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2/ Unsurveyed public land has not been subject to appropriation under the desert land acts since withdrawal by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935.

3/ Title 18, U.S.C., sec. 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or respresentations as to any matter within its jurisdiction.

right of entry under the desert-land laws by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by having taken one by assignment; that he has personally examined every legal subdivision of the land sought to be entered; that he has not, since August 30, 1890, acquired title, under any of the agricultural land laws, to lands which, togeth r with the land applied for, will exceed in the aggregate 320 acres, or 480 acres in case he has made an enlarged homestead for 320 acres; and that he intends to reclaim the lands applied for by conducting water thereon within four years from the date of his application. The application must contain a description of the land by legal subdivisions, section, township, and range. If the application is made for lands, withdrawn or classified as coal lands or for lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, sodium, sulphur, oil, gas, or asphaltic minerals, or valuable therefor, the applicant also must state in his application that the same is made in accordance with and subject to the Act of June 22, 1910 (36 Stat. 583), or the Act of July 17, 1914 (38 Stat. 509), as the case may be. /Circ. 1474, July 8, 1940; Circ. 1689, July 28, 1948; Circ. 1718, Dec. 28, 1948/

232.11 Showing required in application as to character of land. Special attention is called to the terms of this application, as they require a personal knowledge by the entryman of the lands intended to be entered. The showing which is made a part of the application, may not be made by an agent or upon information and belief, and the manager must reject all applications in which it is not made to appear that the statements contained therein are made upon the applicant's own knowledge, obtained from a personal examination of the land. The blank spaces in the application must be filled in with a complete statement of the facts showing the applicant's acquaintance with the land and how he knows it to be desert land. This declaration must be corroborated by the statements of two reputable witnesses, who also must be personally acquainted with the land, and they must state the facts regarding the condition and situation of the land upon which they base the opinion that it is subject to desert entry.

The statements in the blank form of declaration and accompaning statements as to present character of the land may be modified as as to show the facts in any case wherein application is made for entry of lands reclaimed or partially reclaimed, by applicant, before survey, under the provisions of the Act of March 28, 1908; as to a former application or entry, in case application is made for a second entry under the provisions of the Act of September 5, 1914; as to the character of the land with respect to coal deposits in case application is made under the provisions of the Act of June 22, 1910, for lands withdrawn or classified as coal lands, or valuable for coal; and with respect to phosphate, nitrate, potash, sodium, sulphur, oil, gas, and asphaltic minerals in case application is made under the provisions of the Act of July 17, 1914, for lands withdrawn, classified, or reported as containing those substances, or valuable therefor. /Par. 9, Circ. 474, Dec. 18, 1928; Circ. 1689, July 28, 1948/

232.12 Post-office addresses of applicants and witnesses. Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the manager of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them. The manager will be careful to note the post-office address on his records. /Par. 10, Circ. 474, Dec. 18, 1928/

232.13 Officers qualified to administer oaths; time for filing of applications. All proofs, affidavits, and oaths of any kind whatsoever required by law to be made by applicants and entrymen and their corroborating witnesses may be executed before any officer authorized to administer oaths in public land cases, as explained in sec. 210.1.

An application to make desert land entry is not acceptable if dated more than 10 days before its filing at the district land office. /Par. 11, Circ. 474, Dec. 18, 1928/

232.14 Evidence of water rights required with application. No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. All applications not accompanied by the evidence above indicated will be rejected. /Par. 12, Circ. 474, Dec. 18, 1928/

232.15 Plan of irrigation and payment; reports. At the time of filing the application with the manager, the applicant also must file plans describing in detail the following: Source of water supply; character of the irrigation works constructed, in course of construction, or proposed to be constructed, i.e., reservoirs for storage, canals, flumes, or other methods by which water is to be conserved and conveyed to the land; if by direct diversion, the character and volume of the flow of the streams or springs, whether perennially flowing or intermittent. If the works have not been constructed, it must be shown whether they are to be built by an irrigation district, a corporation, or an association, and a general description of the proposed plan must be furnished. It must be shown in connection with any proposed plan whether, and by whom, surveys and investigations have been made which demonstrate the existence of a sufficient water supply and the feasibility of the proposed works to convey water to the land. If the applicant individually, or in association with others, proposes to construct irrigation works, a statement must accompany the application, containing a general description of the proposed works, an estimate of the cost, and such other data as will enable the Department to determine the sufficiency of the water supply and the feasibility of the proposed works to convey water to the lands to be irrigated. If the irrigation is proposed by means of artesian wells or by pumping from non-artesian under-ground sources of water supply, a statement must be submitted as to the existence of such water supply upon or near the land involved, including information as to other wells theretofore sunk and affording a water supply to adjoining or neary-by lands.

With respect to the land itself, a specific showing must be submitted as to its approximate altitude, character of the soil, the approximate irrigable area of each legal subdivision, and the position and direction of the proposed permanent main and lateral ditches on the land, and that the land is of such contour that it can be irrigated from the proposed system. The map required to be filed by section 4 of the Act of March 3, 1877, as amended by section 2 of the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 327), must be sufficiently definite and accurate (preferably, but not necessarily, prepared by a licensed engineer) to show the plan for conducting water to the land to be irrigated. The manager will carefully examine the evidence submitted in such applications, and either reject defective applications or require additional evidence to be filed.

At the time of filing his application, plans, and the statements submitted therewith the applicant must pay the manager the sum of 25 cents per acre for the lands therein described, the application to be given its proper serial number at that time. No rights to the land are initiated by the filing of an application unless this sum is paid or tendered. The manager will issue a receipt for the money, and, after proper notations have been made on the records of the district land office, will transmit the originals of all of the papers to the regional administrator for preliminary consideration, together with report in duplicate, as to any conflicts of record.

The regional administrator will cause a field examination to be made; if necessary, as to the sufficiency of the alleged water supply and the feasibility of the proposed plans. /Circ. 1474, jUly 8, 1940; Circ. 1535, May 26, 1943; 1946 Reord. Plan No. 3, sec. 403, eff. July 16, 1946, 60 Stat. 1100; Circ. 1689, July 28, 1948; Circ. 1712, Dec. 21, 1948; Circ. 1718, Dec. 28, 1948/

Assignment

232.16 Lands which may be assigned. By the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 329), assignments of desert-land entries were recognized. The Act of March 28, 1908 provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous. /Par. 14, Circ. 474, Dec. 18, 1928/

Cross Reference: For assignment of desert-land entries within Government reclamation projects, see sec. 230.121.

232.17 Qualifications of assignees. The Act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a citizen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under the Act of September 5, 1914, to make a second entry, he can not take such an entry by assignment. The language of the Act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second entry. The right of entry under the desert land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking one by assignment, unless such entry be subsequently lost, forfeited, or abandoned because of matters beyond the claimant's control.

A person who has the right to make a second desert-land entry under the Act of September 5, 1914, may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned. The right to make a second desert-land entry, however, is not possessed by any person who has assigned some former entry or part thereof.

The Act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized. [Par. 15, Circ. 474, Dec. 18, 1928]

232.18 Showing required of assignees; recognition of assignments. As evidence of the assignment there should be transmitted to the manager the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer, who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

An assignee must file with his deed of assignment a statement (Form 4-2740) showing his qualifications to take the entry assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status, in accordance with Part 137 of this chapter. If the assignee is a woman, she should in all cases state whether she is married, and if so, she must make the showing required by Part 137. In short, the assignee must prove that he possesses all the qualifications necessary to enable him to make a desert-land entry for the land proposed to be assigned were it subject to entry. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the applicant prior to such payment. (6 L.D. 541, 33 L.D. 152). An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submissions of final proof in furtherance of such contract. (34 L.D. 383). The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L.D. 453). The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgments of deeds. The assignee must furnish a statement as to his qualifications on Form 4-274c.

No assignments of desert-land entries or parts of entries are conclusive until examined in the district land office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert land law, and to whom, therefore, recognition of the assignment is refused by the manager, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L.D. 90 and 48 L.D. 519. (Par. 16, Circ. 474, Dec. 18, 1928; Circ. 1689, July 28, 1948)

Sale, Taxation and Mortgage

232.19 When lands may be sold, taxed, or mortgaged. After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so obtained would fail if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the Act of August 11, 1916 (39 Stat. 506; 43 U. S. C. 621-630), may be taxed and otherwise dealt with as provided by said Act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the Act of June 13, 1930 (46 Stat. 581; 43 U.S.C. 455, 455a-455c).

A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgaged by recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgages, or othr encumbrancers may file in the proper district land office written notice stating the nature of their claims, and they will thereupon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry. (Par. 16, Circ. 474, Dec. 18, 1928)

232.20 Showing required. In order to test the sincerity and good faith of claimants under the desert land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention to reclaim them, Congress, in the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 327, 323) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said Act, however, authorizes the submission of final proof at an earlier date than four years from the time the entry is made in cases wherein reclamation has been affected and expenditures of not less than $3 per acre have been made.

Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have personal knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made. /Par. 17, Circ. 474, Dec. 18, 1928/

232.21 Acceptable expenditures. Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district, through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended, nor the more proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L. D. 106). /Par. 18, Circ. 474, Dec. 18, 1928/

232.22 Expenditures not acceptable. Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instance, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry on the same land under the Act of September 5, 1914, can not receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L.D. 601 and 42 L.D. 523);

Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as railing the land, will not be accepted.

No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in case has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof. /Par. 18, Circ. 474, Dec. 18, 1928/

232.23 Action by manager. Managers are instructed to examine carefully all annual proofs filed and are authorized to suspend them, with notice to claimants to cure defects within 30 days or to reject them, subject to the usual right of appeal to the Director, Bureau of Land Management. However, no annual proof which alleges an expenditure for stock or interest in an irrigation company should be rejected merely because the expenditure was of that character unless such rejection be warranted under instructions issued by the Director, Bureau of Land Management in acting upon the report on the particular company in question. If no such instructions have been issued, and the company referred to in the annual proof be one on which the manager has not previously requested a report from the proper regional administrator, the manager will immediately call for such report and advise the Director thereof. The manager will endorse the fact and date of the call upon the margin of the annual proof. /Par. 18, Circ. 474, Dec. 18, 1928/

232.24 Procedure where proof is not made when due. Managers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendancy of a Government proceeding initiated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice more secure to the contestant a preference right in event the entry be canceled for default under said notice. /Par. 18, Circ. 474, Dec. 18, 1928/

232.25 Extensions of time.[4] The law makes no provision for extensions of time in which to file annual proof becoming due subsequent to December 31, 1936 on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose can not therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L.D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof. /Par. 18, Circ. 474, Dec. 18, 1928/

232.26 Submission of proof before due dates. Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof, because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required. /Par. 19, Circ. 474, Dec. 18, 1928/

Final Proof

232.27 General requirements. The entryman, his assigns, or in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with. /Par. 20, Circ. 474, Dec. 18, 1928/

232.28 Notice of intention to make final proof. When an entryman has reclaimed the land and is ready to make final proof, he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an endorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice /Par 20, Circ. 474, Dec. 18, 1928/

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[4] Extensions of time for making desert-land proofs were authorized by the Acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such Acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this Chapter. The regulations were issued as Circs. 1311, 1365, and 1432, respectively.

232.29 Publication of final proof notice. The manager will report promptly to the regional administrator the receipt of a notice of intention to make desert-land proof and withhold the issuance of notice for publication until the mineral or nonmineral character of the land has been determined and he has been instructed as to further action which should be taken. When instructed to do so, the manager will issue the usual notice of publication. This notice must be published once a week for 5 successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L.D. 131; 43 L.D. 216), and must also be posted in a conspicuous place in the district land office for the same period of time. The claimant must pay the cost of the publication, but it is the duty of managers to procure the publication of proper final-proof notices, and managers should accordingly exercise the utmost care in that behalf. (40 L.D. 459). The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by some one authorized to act for him. The manager will certify to the posting of the notice in the district land office. /Par. 21, Circ. 474, Dec. 18, 1928; Circ. 1547, May 29, 1943/

232.30 Submission of final proof. On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law, or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in sec. 210.1 /Par. 22, Circ. 474, Dec. 18, 1928/

232.31 Showing as to irrigation system. The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated. [Par. 23, Circ. 474, Dec. 18, 1928]

232.32 Showing as to lands irrigated and reclaimed. While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L.D. 420). The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme such subdivision must be relinquished. (43 L.D. 269). [Par. 24, Circ. 474, Dec. 18, 1928]

232.33 Showing as to tillage of land. As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L.D. 456). In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation. [Par. 25, Circ. 474, Dec. 18, 1928]

232.34 Showing as to water right. In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L.D. 305).

It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172). The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, can not be viewed as meeting the requirements of the desert land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question. /Par. 26, Circ. 474, Dec. 18, 1928/

232.35 Showing where water supply is derived from irrigation project. Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies, associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer, either with his final proof or subsequently, such evidence as he can tending to support his contentions.

Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the manager will endorse the name and address of the project upon the copy of the notice to be forwarded to the regional administrator. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the manager will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time they will reject the proof; subject to the usual right of appeal. If application for hearing be filed, the manager will transmit one copy thereof to the proper regional administrator. /Par. 27, Circ. 474, Dec. 18, 1928/

232.36 Final proof expiration notice. Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the manager should send the claimant a notice, addressed to him at his post-office address of record, informing him that he will be allowed 90 days in which to submit final proof; or if the death of the claimant of record be suggested, such notice should also be addressed to the claimant at the post office nearest the land. (44 L.D. 364).

Should no action be taken within the time allowed, the entry will be canceled. The notice provided for in this section must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted. /Par. 28, Circ. 474, Dec. 18, 1928/

232.37 Requirements where township is suspended for resurvey. No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L. D. 223). This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township. If submitted, the final proof will be received by the manager, who will pursue the same course in regard thereto that would have been pursued in the absence of the suspension. Should final certificate be issued on any such proof it will describe the entered land in terms of the original survey with reference to the plat of such survey and to the fact of a pending resurvey, as follows:

In accordance with official plat of survey approved______; resurvey now pending under Group No.______B.L.M.; authorization dated__________ /Par. 28, Circ. 474, Dec. 18, 1928/

Cross Reference: For resurveys, see Part 281.

Extentions of time for Final Proofs; Acts of March 28, 1908,
April 30, 1912, and February 25, 1925

232.38 General Acts authorizing extensions of time[5] There are five general Acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by desert-land claimant. Said Acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U.S.C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U.S.C. 333); April 30, 1912 (37 Stat. 106; 43 U.S.C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161; 43 U.S.C. 335); and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336). The Act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388). For regulations governing extensions under said Act of June 27, 1906, see sec. 230.113-230.119. The Act of March 4, 1915, is applicable only to entries made prior to March 4, 1915; and while authorizing in certain cases an additional extension to claimants who have had one or more extensions under previous laws, this Act denies any extension under its terms to claimants who can obtain such benefit under prior Acts. /Par. 29, Circ. 474, Dec. 18, 1928/

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[5] In addition to the Acts cited in this section, extensions of time for making desert-land proofs were authorized by the Acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C., 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a), Such Acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this Chapter The regulations were issued as Circs. Nos. 1311, 1365, and 1432, respectively.

Cross Reference: For regulations under the Act of March 4, 1915, see sec. 232.41-232.43.

232.39 When extensions of time may be granted. Under the provisions of the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 333), the period of 4 years may be extended, in the discretion of the regional administrator, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. The statute authorizes the proper officer to grant the extension, in his discretion, for such a period as he may deem necessary for the completion of the reclamation, not exceeding 3 years, but applications for extension under said Act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L.D. 332). It must also appear that he has complied with the law as to annual expenditures and proof thereof.

Under the provisions of the Act of April 30, 1912 (37 Stat. 106; 43 U.S.C. 334), the Secretary of the Interior may, in his discretion, in addition to the extension authorized by previous legislation, grant to any entryman under the desert land laws a further extension of time for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension can not be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the Act of March 28, 1908, should file with the manager a statement setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts; and the manager, after carefully considering all of the facts, will forward the application to the proper regional administrator with appropriate recommendation.

The manager is required to suspend any application for extension of time if he considers the statement defective in form or substance, allowing the applicant a reasonable time to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made, and advising the applicant that upon his failure to take any action within the time specified appropriate recommendations will be made. After the expiration of the time thus granted, the original application and the amended statements or exceptions, as the case may be together with proper report and recommendations of the manager, will be transmitted to the regional administrator.

Applications for further extension of time under the Act of April 30, 1912, and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336), may be made in the same manner, and the same procedure will be followed with respect to such applications as under the Act of March 28, 1908, and the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335), as amended. /Par. 30, Circ. 474, Dec. 18, 1928; 1946 Reorg. Plan No. 3, sec. 403, eff. July 16, 1946, 60 Stat. 1100; Circ. 1635, May 26, 1943; Circ. 1689, July 28, 1948/

232.40 Procedure on applications for extensions of time, where contest is pending. A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L.D. 603).

Consideration by the Bureau of Land Management of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal but without prejudice to the contestant's right to amend his charges. /Par. 31, Circ. 474, Dec. 18, 1928/

Relief: Act of March 4, 1915

232.41 General statement. The last three paragraphs of section 5 of the Act of Congress approved March 4, 1915 (38 Stat. 1161), entitled "An Act making appropriations to supply deficiencies in appropriations for the fiscal year 1915 and for prior years, and for other purposes," as amended by the Act of March 21, 1918 (40 Stat. 458; 43 U.S.C. 335, 337, 338), authorize the Secretary of the Interior, under rules and regulations to be prescribed by him, to grant relief to certain classes of desert-land claimants. This law provides that upon certain conditions such an entryman, or his duly qualified assignee, may obtain an extension of time, not exceeding 3 years from date of its allowance, in which to submit final proof; or that upon certain other conditions he may either complete his entry in the manner required of a homestead claimant or purchase the land on special terms. /Par. 34, Circ. 474, Dec. 18, 1928/

232.42 Applications for relief. All applications for the benefits of section 5 of the Act of March 4, 1915, as amended, should be filed prior to the expiration of the time within which the applicant would otherwise be required to make final proof on his desert-land entry in the land office for the district in which the entered land is situated, to be referred to the regional administrator with appropriate recommendation. They must be supported by the statement of the applicant, corroborated by two witnesses, as to the material facts necessary to be shown.

All such applications should contain the name of the entryman and the date of the entry, and, if the entry has been assigned, the name of the assignee and date of the assignment; the description of the land involved; a statement of the various sums of money expended by the applicant or his grantors in an endeavor to reclaim the land, and the particular purpose for which each sum was expended; the facts by reason of which it has been impossible for claimant to effect reclamation and cultivation and to submit final proof within the usual period, or such extensions thereof as may have been granted; and the facts by reason of which the applicant considers that there is or is not, as the case may be, a reasonable prospect that is an extension of time is granted him, he will be able to secure a sufficient water supply and make final proof of reclamation, irrigation, and cultivation, as required by the desert land law. /Par. 35, Circ. 474, Dec. 18, 1928; Circ. 1535, May 26, 1943; 8 F.R. 7284/

232.43 Conditions for extensions of time. (a) To entitle an entryman to the benefits of the first of the last three paragraphs of section 5 of the Act of March 4, 1915, as amended, the following conditions must exist: (1) the entry must be a lawful, pending entry made prior to March 4, 1915; (2) the entryman must have complied with the requirements of the desert-land law with reference to yearly expenditures and the submission of annual proofs thereof; (3) there must be a reasonable prospect that if an extension of time is granted the claimant will be able to make the final proof of reclamation, irrigation, and cultivation as required by law; (4) the case must be one in which an extension of time or a further extension can not properly be allowed under other laws; and (5) there must be established some fact or facts constituting a reasonable excuse for the applicant's failure to comply with the law within the usual time and fairly entitling him, in justice and equity, to this form of relief.

(b) The existence of the first two of these conditions can be determined by examination of the records of the Bureau of Land Management but in order that applicants may have the benefit of every possible circumstance entitling them to equitable consideration, they are privileged to make such further showing as they may desire as to any moneys which they may have expended in improving the land but not used as the basis of annual proof.

The existence of the third, fourth, and fifth conditions must be established in all cases by the statements filed in support of the application for relief.

With regard to the third condition, it must be shown what steps the applicant has taken to secure a water right; and either that he has secured such a right (so far as that is possible, under the State laws, in cases where beneficial application of the water to the land has not yet been made), or that there is no reason to doubt that he will be able to secure such a right before his final proof is due; that the course of water supply, if a natural stream, will, in ordinary seasons, furnish the amount of water needed by the claimant to reclaim the irrigable land in his entry after all appropriations prior to his have been satisfied; and, if water is to be taken from wells, that there is reason to believe that an adequate supply can be obtained from that source.

If water is to be obtained through an irrigation company, association, or district upon which a favorable report has been made and favorable action on such report has been taken, the existence of the third condition will be taken for granted, provided the applicant shows that he has become the owner of the required amount of stock or interest in the project, or taken the required steps to secure the inclusion of the land in the district, or that it will be entirely possible for him to do the one or the other, as the case may be.

If an adverse report has been made on the irrigation project in question, or if adverse action thereon has been taken, the applicant may present such showing of facts as may tend to refute the findings made and the conclusions reached, whereupon, if the allegations seem to warrant such action, a hearing will be ordered to determine the merits of the case.

The fourth condition will be satisfied if the case does not come within the terms of any of the other Acts of Congress providing for the allowance of extensions of time for submitting final proof on desert-land entries.

The extension of time authorized by the Act of March 4, 1915, is applicable only to entries made prior to the date of the Act. Where the irrigation works intended to convey water to the land have been completed, or for any other reason, the claimant's inability to submit final proof can not be attributed to unavoidable delay in the construction of such irrigation works; where the cause of delay in submitting the final proof is the claimant's temporary inability to acquire water right; or where on account of drought of greater or less duration but not likely, in all probability, to be a permanent condition, the operation of a completed system of irrigation works has been hindered or delayed, an application for an extension of time under the first paragraph of the Act of March 4, 1915, as amended by the Act of March 21, 1918, above cited, can be entertained, except where the entered lands have been included within the exterior limits of a withdrawal or irrigation project under the Act of June 17, 1902 (32 Stat. 388), and the submission of satisfactory final proof is being hindered or delayed thereby, so that the case comes within the provisions of the fifth section of the Act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448).

No application for extension of time can be allowed, however, if it appears that the claimant's inability to submit final proof as required by the desert-land law is due to his own neglect or default; nor will any such application be granted where it appears that there is no reasonable prospect that the applicant will be able to provide a supply of water sufficient to irrigate and permanently reclaim all the irrigable land embraced in his entry, because, in such a case, no extension of time can enable the entryman to comply with the requirements of the desert-land law. /Par. 36, Circ. 474, Dec. 18, 1928/

232.44 Relief by homestead proof, or purchase. The last two paragraphs of section 5 of the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337, 338) are designed to afford relief in cases of the kind last mentioned in the preceding section by authorizing the Secretary of the Interior, in his discretion, to permit the applicant to perfect his entry in the manner required of a homestead entryman, or to purchase the land on the terms specified, as the applicant may elect. The entry itself is not transmuted, however, but remains a desert-land entry, subject to a new kind of proof. /Par. 37, Circ. 474, Dec. 18, 1928/

232.45 Conditions authorizing homestead proof and purchase. (a) To entitle a claimant to relief under either of the last two paragraphs of section 5 of the Act of March 4, 1915, as amended, it must be made to appear to the satisfaction of the Secretary of the Interior, (1) that the entry in question is a lawful pending entry, made prior to March 4, 1915; (2) where application for relief is made on behalf of an assignee, that the entry was assigned to him prior to March 21, 1918; (3) that the applicant or his assignors have, in good faith, expended the sum of $3 per acre in the attempt to effect reclamation of the entered land; and (4) that there is no reasonable prospect that if the extension of time authorized under the provisions of this Act or any other existing law, were granted the applicant would be able to secure water sufficient to effect reclamation of the land in his entry or any subdivision thereof.

(b) The first two of these conditions can be determined from the records of the Bureau of Land Management.

With regard to the third condition, any expenditure which the claimant can show that he has made in good faith and with a reasonable belief that it would tend to effect reclamation of the land will be acceptable even though such expenditure may not have been such as would satisfy the requirements for annual proof.

With regard to the fourth condition, the applicant should show what steps he has taken for the purpose of acquiring a water right and with what result, what has been done by himself or others toward the development of a water supply and the construction of an irrigation system to bring the water to the land, the reasons for his failure to secure an adequate water supply, and his grounds for believing that there is no reasonable prospect of final success in acquiring such a supply. In this connection consideration will be given to any special agent's reports on file regarding any irrigation company or irrigation district from which applicant has been endeavoring to secure water and if it appears therefrom that there is no reasonable prospect that the applicant can secure a sufficient water supply, the existence of that condition will be taken for granted. /Par. 38, Circ. 474, Dec. 18, 1928; Circ. 1535, May 26, 1943, 8 F.R. 7284/

232.46 Notice of allowance of relief; election to purchase. When any application for relief under the second of the last three paragraphs of section 5 of the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337), as amended, shall have been allowed by the manager, notice thereof will be served upon the claimant, advising him that he will be allowed 5 years from date of service of such notice within which to perfect his entry in the manner required of a homestead entryman, unless he shall, within 60 days from receipt of such notice, file in the district land office an election to perfect the entry within 5 years by purchase under the third paragraph, and pay to the manager, at time of election, the sum of 50 cents for each acre embraced in the entry. Such election, if filed, must be in writing, signed by the claimant, and his signature thereto must be witnessed by two persons, whose post-office addresses shall be given. The election must bear the serial number of the entry to which it relates, and also the number of the receipt issued for the money paid in connection therewith. /Par. 39, Circ. 474, Dec. 18, 1928/

232.47 Procedure for final proofs in relief cases. In the submission and consideration of final proofs under the last two paragraphs of section 5 of the Act of March 4, 1915, as amended, the usual course of procedure with regard to desert-land final proofs will be followed, so far as applicable. The notice of intention to submit proof, however, should indicate whether the entry is to be perfected as in homestead cases or by purchase. /Par. 40, Circ. 474, Dec. 18, 1928/

232.48 No assignment allowed after relief has been granted. After a desert-land entry has been authorized to be perfected either in the manner of a homestead entry or by purchase, no assignment thereof will be allowed, for the reason that the benefits of the last two paragraphs of section 5 of the Act of March 4, 1915, as amended by the Act of March 21, 1918, are not available to assignees under assignments made subsequently to the date of the Act, as amended; and in the final adjudication of entries being perfected under the provisions of said paragraphs the same rules will be observed, as to proof of nonalienation, as in homestead cases. /Par. 41, Circ. 474, Dec. 18, 1928/

232.49 Entries perfected by compliance with homestead law. A claimant who has received permission to perfect his entry in the manner required of homestead entrymen may make proof at any time when he can show that residence and cultivation have been maintained in good faith for the required length of time and to the required extent.

However, inasmuch as the homestead laws do not authorize the commutation of homesteads made under the Enlarged Homestead Acts, commutation proof will not be accepted upon any desert-land entry involving more than 160 acres. In addition to the original payment of 25 cents per acre at time of entry, a claimant who makes commutation proof must pay for the land at the regular "minimum price" of $1.25 per acre.

Failure to submit final proof within the 5-year period allowed by the law will be ground for the cancellation of the entry, unless good reason for the delay can be shown, in which event final certificate may be issued and the case referred to the Board of Equitable Adjudication for confirmation.

Those provisions of the homestead law which define the personal qualifications required of entrymen do not apply to cases of this kind, but the final proof must show that the claimant possesses the same qualifications as to citizenship and the amount of land entered by him or assigned or patented to him, under the agricultural public land laws, as in the case of those who make ordinary final proof on desert-land entries. /Par. 42, Circ. 474, Dec. 18, 1928/

232.50 Residence and improvements for homestead proof. If not already residing on his desert-land entry, the claimant must establish residence thereon within 6 months from the date of receiving the notice advising him that he will be permitted to perfect his entry under the second of the last three paragraphs of section 5 of the Act of March 4, 1915, as amended, unless such period be extended as permitted by the homestead law.

Residence upon the land must be continuously maintained for a period of 3 years from and after the date of its establishment. During each year the claimant may be absent for two periods only, the aggregate thereof not to exceed 5 months. Actual residence must be maintained for the remaining 7 months of each year. If commutation proof is submitted, substantially continuous residence upon the land for a period of 14 months must be shown, together with the cultivation of not less than one-sixteenth of the area of the entry, unless a reduction of the area required to be cultivated be allowed. The requirements as to the period of residence and amount of cultivation are those of the Act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218), or the "3-year homestead law."

If a claimant establishes residence upon his entry prior to the allowance of his application for relief, and continues to maintain it in good faith as required by the homestead law, full credit will be allowed for the period during which such residence is so maintained.

Leaves of absence and credit for military service will be allowed upon the same terms and conditions as in case of a homestead entry.

The claimant must have a habitable house upon the land at the time of submitting final proof. Other improvements should be of such character and amount as are sufficient to show good faith. /Par. 43, Circ. 474, Dec. 18, 1928/

Cross Reference: For residence and cultivation requirements under the homestead laws, see sec. 166.24-166.46.

232.51 Cultivation for homestead proof. Cultivation of the land for at least two years is required, and this must generally consist of actual breaking of the soil, followed by planting, sowing of seed, and tillage for a crop other than native grasses. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the Act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality. During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are applicable to all cases, without regard to the area or location of the entry. The period of cultivation, like that of residence, may begin before the allowance of the application for relief; credit for all cultivation, if in accordance with the provisions of the 3-year homestead law, will be allowed, without regard to the time when it was performed. /Par. 44, Circ. 474, Dec. 18, 1928/

232.52 Homestead proof on entries in Utah and Idaho. If the entry is situated in the State of Utah or Idaho, and the lands involved have been or shall be, designated as being of the character subject to entry under the sixth section of the Act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), as amended, or June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), respectively, the entryman may avail himself of the privileges of these sections, upon a proper showing of the character of the land, as required of a homestead applicant thereunder, in which event residence need not be maintained upon the land, but the amount of cultivation required is double that in ordinary cases and must be shown during a period of 4 years. /Par. 45, Circ. 474, Dec. 18, 1928/

232.53 Heirs and devisees; reduction of cultivation. If an entryman dies before being authorized to exercise the rights conferred by the last two paragraphs of section 5 of the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 337, 338), as amended, or after such authorization but before he has perfected his entry, his rights will pass to those persons who would inherit his lands according to the laws of the State wherein the entry is located or, if he leaves a will, to those to whom he devises such rights. Applications for the benefits of the said Act of March 4, 1915, may be filed, and proofs thereunder may be submitted either by one of the heirs in behalf of all, by a guardian of the heirs' estate if they themselves are minors, or by the entryman's executor or administrator, acting under the supervision of the proper probate court.

The heirs or devisees will not be required to settle or reside upon the land, but must show that the land has been cultivated and improved by them or on their behalf, as required by the homestead law, for such period as will, when added to the entryman's period of compliance with the law, aggregate the required term of 3 years. If they desire to commute the entry, they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived.

With regard to the reduction of the required area of cultivation, the same rules and procedure will be followed as in homestead cases. /Par. 46, Circ. 474, Dec. 18, 1928/

232.54 Fees. The same fees, and no others, may be charged by managers upon submission of final proofs under section 5 of the Act of March 4, 1915, as amended, as upon submission of ordinary desert-land proofs. No commissions may be charged under any circumstances and no testimony fees unless the proof is taken at the land office. /Par. 47, Circ. 474, Dec. 18, 1928/

232.55 Entries perfected by purchase. If claimant elects to perfect his entry under the last paragraph of section 5 of the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 338), as amended, he must, within 5 years from the date of his election and payment of the sum of 50 cents per acre make final proof and pay to the manager the further sum of 75 cents for each acre of land embraced in his entry. The final proof, in order to be acceptable, must show that, at the date of the proof, the claimant has upon the tract permanent improvements conducive to the agricultural development thereof, of the value of at least $1.25 per acre, and that he has a good faith used the land for agricultural purposes for at least 3 years. Under said last paragraph grazing will be regarded as an agricultural use, provided it be established that the land is best suited to that purpose and has been so used in good faith. Actual residence on the land need not be shown. /Par. 48, Circ. 474, Dec. 18, 1928/

232.56 Credit for improvements used as the basis for annual proof. Improvements made during the first 3 years of the life of the entry and used as the basis of annual proof, if permanent in character and conducive to the agricultural development of the land, may be counted as improvements required to be shown under the last paragraph of section 5 of the Act of March 4, 1915, as amended, provided their character and continued existence are satisfactorily established by the final proof; but no water rights or irrigation ditches will be recognized for this purpose unless it is clearly shown that they have been made actually conducive to the agricultural development of the land, or a portion thereof, and that that fact is not inconsistent with the truth of the claimant's preliminary showing that there was no reasonable prospect that he could acquire a sufficient water supply to irrigate the irrigable land of his entry. /Par. 49, Circ. 474, Dec. 18, 1928/

232.57 Penalty for failure to make final proof and payment. If a claimant fails to make final proof and payment, as required by the last paragraph of section 5 of the Act of March 4, 1915, as amended, within the 5 year period, all sums theretofore paid by him will be forfeited and the entry canceled. /Par. 50, Circ. 474, Dec. 18, 1928/

232.58 Forms of Proofs. Final proofs under the second of the last three paragraphs of section 5 of the Act of March 4, 1915, as amended, may be made on the forms used in homestead cases. For final proofs to be made under the last paragraph special forms have been provided. /Par. 51, Circ. 474, Dec. 18, 1928/

232.59 Applications for relief; initial payment required. The Act of February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), entitled "An Act to amend an Act approved March 4, 1929 (45 Stat. 1548), entitled 'An Act to supplement the last three paragraphs of section 5 of the Act of March 4, 1915 (38 Stat. 1161), as amended by the Act of March 21, 1918 (40 Stat. 458),'" grants relief to desert-land entrymen, as set forth in sections 232.59 and 232.60.

This Act applies to all pending desert-land entries made prior to July 1, 1925, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this Act has in good faith expended the sum of $3 per acre in the attempt to effect reclamation of the land and where there is no reasonable prospect that he would be able to secure water sufficient to effect reclamation of the irrigable land or any legal subdivision thereof.

Desert-land entries made prior to March 4, 1915, and pending February 14 1934, are entitled to the relief granted by the Act of March 4, 1915, as amended, or by the provisions of this Act. Desert-land entries made since March 4, 1915, and prior to July 1, 1925, and pending February 14, 1934, are entitled only to the relief provided for in this Act.

In all applications for relief of desert-land entries made prior to March 4, 1915, it should be specifically stated whether the relief is sought under the provisions of the Act of March 4, 1915, or under the provisions of said Act of February 14, 1934.

The showing as to the right to such relief must be the same as that required by sec. 232.42. Applications for relief hereunder must be filed in the land office for the district in which the land embraced in the particular entry is situated, and, after examination by the manager as to statement of facts required by sec. 232.42, and, where necessary opportunity given applicants to supply data to cure defects, referred to the regional administrator for instructions.

When any application for relief under the provisions of this Act shall have been approved by the manager, notice, by registered mail, will be served upon the claimant, of such approval that he will be allowed 90 days from date of receipt of such notice within which to pay to the manager 25 cents an acre for the land embraced in the entry and to file an election to perfect title to the entry under the provisions of this Act, and that if he fails within the time allowed to make said initial payment of 25 cents per acre, the entry will be canceled; that he will be allowed one year from the date of the filing of such election to pay the manager the additional amount of 75 cents an acre; and that, in case the final payment be not made within the time prescribed, the entry will be canceled and all money theretofore paid will be forfeited.

Should any claimant fail to pay said 25 cents per acre and file said election within the 90-day period, the entry will be canceled and the case closed without further notice. [Circ. 1323, Apr. 24, 1934, 54 I. D. 429; Circ. 1535, May 26, 1943, 8 F.R. 7284]

232.60 Publication and proof; final payment required. To perfect title to the entry, under the Act of February 14, 1934, the claimant shall file with the manager a notice of intention to do so, and the manager will order the publication thereof in the same manner as to other desert-land cases and in the prescribed form.

Publication, proof thereof and the required additional payment of 75 cents per acre should be made within 1 year from the date of the filing of the election mentioned in the preceding section, it being expressly stated in said Act of February 14, 1934, that said additional payment of 75 cents per acre should be paid within 1 year from the date of the filing of the election to perfect title to the entry under said Act, with the provise "That in case the final payment be not made within the time prescribed, the entry shall be canceled and all money theretofore paid shall be forfeited." There is no provision of law whereby extension of time to make this payment may be granted.

These acts having been performed, and there being no protest, contest, or other objection, the manager will issue the final certificate and transmit it to the Bureau of Land Management with the regular returns.

Where relief has heretofore been granted in desert-land entries made prior to March 4, 1915, and such entries are intact upon the records claimants may, if they so desire, take advantage of the provisions of this Act.

Where relief has been granted in desert-land entries under the original Act of 1929 and prior to February 14, 1934, date of passage of Act amendatory thereof, and such entries are intact upon the records of the Bureau of Land Management and all of the payments required to be made by said original Act of 1929 have not been completed prior to the date of said amendatory Act, in all such cases the total amount to be collected of such entrymen as a condition precedent to the patenting of their entries will be at the rate of $1 per acre, instead of $2. /Circ. 1323, Apr. 24, 1934, 54 I.D. 430/

Payments

232.61 Collection of purchase money and fees; issuance of final certificate. At the time of making final proof the claimant must pay to the Manager the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law, except where the entry is perfected by commutation or purchase under the Act of March 4, 1915 as amended and supplemented. (See sec. 232.49, 232.55). The manager will issue a receipt for the money paid, and if the proof is satisfactory, he will issue a certificate in duplicate and deliver one copy to the claimant and forward the other copy to the Bureau of Land Management with the regular returns.

If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

When final proof is made on an entry made prior to the Act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the manager will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the manager. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the district land office, the manager will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the Act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries. The manager will then note these adjustments on his tract books and plats and transmit the statements to the Bureau of Land Management with separate reports of all conflicts which may have been developed. He will also report any case in which the claimant has failed, after due notice, to file the required statement of adjustment.

If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land, and upon receipt of the same the manager will issue final certificate which will be transmitted to the Bureau of Land Management with the regular returns. [Par. 32, Circ. 474, Dec. 18, 1928]

232.62 Amounts to be paid. No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the Act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335,337,338), or February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making final proof. Where final proofs are made before the manager in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, he will be entitled to receive jointly 22½ cents for each 100 words of testimony reduced to writing; in all other States he will be allowed 15 cents per 100 words for such service. The United States commissioners, judges, and clerks are not entitled to receive a greater sum than 25 cents for each oath administered by them, except that they are entitled to receive $1 for administering the oath to each entryman and each final-proof witness where final-proof testimony has been reduced to writing by them. [Par. 33, Circ. 474, Dec. 18, 1928]

Contests and Relinquishments

232.63 Contests. Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancelation of the contested entry, in the same manner as in homestead cases, and the manager will give the same notice and is entitled to the same fee for notice as in other cases. [Par. 52, Circ. 474, Dec. 18, 1928]

Cross Reference: For Rules of Practice governing contests and protests, see Part 221.

232.64 Relinquishments. A desert-land entry may be relinquished at any time by the party owning the same, and when relinquishments are filed in the district land office the entries will be canceled by the manager in the same manner as in homestead, preemption, and other cases under the first section of the Act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 202). Conditional relinquishments will not be accepted. [Par. 53, Circ. 474, Dec. 18, 1928]

(The reporting requirements of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.)

Reprint of Circular No. 474, December 18, 1928, as amended by Circular No. 1474, July 8, 1940, Circular 1535, May 26, 1943, Circular 1689, July 28, 1948, Circular 1712, December 21, 1948 and Circular 1718, December 28, 1948.

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See No. 1794
1860

None in Stock

Circular No. 1732

UNITED STATES
DEPARTMENT OF THE INTERIOR
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER I—BUREAU OF LAND MANAGEMENT

PART 250—PUBLIC SALES

Sec.
250.1 Statutory authority
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250.3 Application
250.4 Action upon the application or in the absence of application.
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250.7 Land subject to sale as mountainous or too rough for cultivation; qualifications of applicant.
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250.8 Mineral lands.
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250.11 Action at close of bidding.
250.12 Action after purchaser is declared
250.13 Appeals

AUTHORITY: Secs. 250.1 to 250.13, inclusive, issued under R.S. 453, 2478; 43 U.S.C. 2, 1201.

Section 250.1 Statutory authority. The sale at public auction of isolated or disconnected tracts of public land not exceeding 1520 acres, and tracts not isolated, of not exceeding 760 acres, the greater parts of which are mountainous or too rough for cultivation, is authorized by section 2455 of the Revised Statutes, as amended by section 14 of the Act of June 28, 1934 (48 Stat. 1274; 43 U.S.C. 1171) and the Act of July 30, 1947. /Circ. 1666, Nov. 19, 1947/ (61 Stat. 630).

250.2 Definitions. When used in this part:

(a) "Secretary" means Secretary of the Interior.
(b) "Director" means Director, Bureau of Land Management.

Reprint, April 1949 of Circular No. 1666, Nov. 19, 1947, as amended by Cicular No. 1693, Aug. 27, 1948, and Circular No. 1727, April 5, 1949.

(c) "Regional Administrator" means the regional administrator for the region in which the land is situated. Where there is no district land office in the State in which the land is situated, however, it means the "Director".

(d) "Manager" means Manager of the land office for the district in which the land is situated. Where there is no district land office in a state, it means the Director.

(e) "Applicant" or "purchaser" includes an individual, a partnership, an association or a corporation.
/Circ. 1666, Nov. 19, 1947; Circ. 1693, Aug. 27, 1948/

250.3 Application. An application to have tracts ordered into the market must be executed in duplicate on Form 4-008e. The application must be filed with the manager of the land office for the district within which the land is situated. If the land is in a State in which there is no district land office, the application must be filed with the Director. 1/

The application need not be under oath but must be signed by the applicant and two corroborating witnesses having personal knowledge of the facts stated therein. /Cir. 1666, Nov. 19, 1947/

250.4 Action upon the application or in the absence of application. If an application is not properly executed or not corroborated, if the applicant does not show himself qualified, or if the tract appears not to be subject to disposition, the application will be rejected. If part of the tract is appropriated, the application will be rejected as to that part, and, in the absence of an appeal, the description thereof eliminated from the application, and such further action will be taken as though it had never been included therein.

The Regional Administrator may classify under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315f) as amended, land for offering under this part, and he may authorize such offering of the land for sale if he determines, in accordance with the existing regulations and procedures, that such land is suitable for disposal as an isolated or as a rough or mountainous tract, as the case may be.

The Regional Administrator may authorize the offering of an isolated tract for sale either upon application or on his own motion. /Circ. 1666, Nov. 19, 1947; Circ. 1693, Aug. 27, 1948 /

250.5 Effect of application. The filing of an application in conformity with the regulations in this Part will not segregate the lands applied for from other application under the public land laws, or defeat a prior valid right initiated under any such law. However, until the issuance of a cash certificate, the Regional Administrator may at any time determine that the lands should not be sold, the applicant or any bidder has no contractual or other rights as against the United States, and no action taken will create any contractual or other obligation of the United States. /Circ. 1666; Nov. 19, 1947; Circ. 1693, Aug. 27, 1948/

1/ An application filed with the Director will be transmitted by him to the regional administrator for action, in accordance with B.L.M. Order 346, October 14, 1948. (13 F.R. 6149).

250.6 Land subject to sale as isolated tracts. There is no limitation as as to the number of isolated tract applications which may be filed, nor as to the amount of such land which may be applied for or purchased by any one person or group. An application may include several incontiguous tracts, but it may not embrace an aggregate area in excess of 1520 acres, and tracts with an area over 1520 acres will not be ordered into the market. Each isolated tract will be offered separately and a separate cash certificate will be issued for each tract, except to the extent that they are bought by the same person.

As a general rule, no tract will be deemed isolated unless it is completely surrounded by lands held in non-Federal ownership, or is so effectively separated from other Federally owned lands by some permanent withdrawal or reservation as to make its use with such lands impracticable. A tract is considered isolated if the contiguous tracts are all patented, even though there are other public lands cornering upon the tract. /Circ. 1666, Nov. 19, 1947/

250.7 Land subject to sale as mountainous or too rough for cultivation; qualifications of applicant. Legal subdivisions not exceeding 760 acres, the greater part of which is mountainous or too rough for cultivation, may be offered for sale only upon the application of any person who owns land or holds a valid entry on lands adjoining such tract and regardless of the fact that such tract may not be actually isolated.

An applicant for sale of a tract which is mountainous or too rough for cultivation must show that he is the owner of the whole title, that is, the fee owner, of land adjoining the land applied for, or that he holds a valid entry embracing adjoining land, in connection with which entry he has met the requirements of the law. A showing that the applicant owns cornering land or holds a valid entry of a cornering tract would not qualify him.

An application under this section may not embrace more than 760 acres. An applicant may file any number of applications provided the land applied for together with such land previously purchased does not exceed 760 acres in area. The limitation under this section relates only to applications under this section In acting on applications for rough or mountainous tracts, regard will be had to the character of each subdivision applied for. An entire tract composed of more than one legal subdivision will not be offered upon the ground that the greater part of the tract is mountainous or too rough for cultivation, if taken as a whole. /Circ. 1666, Nov. 19, 1947/

250.8 Mineral lands. Mineral lands. Mineral lands may not be sold except under specific statutory authority which exists for the sale of lands valuable for certain minerals with a reservation of those minerals to the United States. The regulations relating to applications for the surface of such lands are contained in 43 CFR, Part 102. They must be complied with whenever an application is filed for land, withdrawn, classified, or valuable for such minerals, where such land is embraced by mineral permits or leases, or applications for such permits or leases, or where the land lies within the geological structure of a producing oil or gas field.

The notice of sale for publication and posting will provide that the land will be sold subject to reservations to the United States of the appropriate minerals, and in accordance with the provisions of the applicable act or acts which authorize the making of the reservation. The cash certificate and patent will provide for such reservation and will refer to such act or acts. /Circ. 1666, Nov. 19, 1947/

250.9 Publication of notice; time and proof of publication posting required. Upon the issuance of a decision authorizing the sale, a notice for publication will be sent the applicant with instructions that he publish it at his expense in the newspaper designated. Payment for publication must be made by the applicant directly to the publisher. The notice must be published prior to the date of sale in the designated newspaper, if a daily paper, in the Wednesday issue for 5 consecutive weeks; if a weekly, in 5 consecutive issues; and if a semi-weekly, or tri-weekly, in the issue of the same day of each week, for 5 consecutive weeks. The manager will cause a similar notice to be posted in his office during the entire period of publication.

The applicant must file in the district land office, prior to the date fixed for the sale, evidence that publication has been had for the required period. Such evidence may consist of the affidavit of the publisher accompanied by a copy of the notice published. [Circ. 1666, Nov. 19, 1947]

250.10 The bidding. The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice.

Bids may be made by the principal or his agent, either personally at the sale or by mail.

Bids sent by mail will be considered only if received at the district land office prior to the hour fixed for the sale. These bids must be enclosed in sealed envelopes and must be accompanied by certified checks or post office money orders for the amounts of the bids. The envelopes must be marked in the lower-left-hand corner as prescribed in the notice of sale. The envelopes containing the sealed bids will not be opened by the manager until the time fixed for the sale. However, he will note on each envelope the hour and date of its receipt.

The manager will commence the sale by reading the public announcement thereof and by opening the sealed bids and announcing such bids. He will then receive bids from the persons present.

All bidders are warned against violation of the provisions of Title 18, U.S.C., section 1860, prohibiting unlawful combination or intimidation of bidders.

250.11 Action at close of bidding.

(a) Declaration of highest bidder. When all persons present shall have ceased bidding, the manager will, in the usual manner, declare the bidding closed, subject to the preference right of purchase of owners of contiguous land (see paragraph (b) of this section), announce the amount of the highest bid and declare the offerer thereof (or his principal) the highest bidder, provided that the latter immediately pays to the manager the amount of the bid, if he has not already done so. In the absence of such payment, the manager will at once proceed with the sale, excluding the bid made by the highest bidder and starting with the next/highest bid not withdrawn. In the event the bids of two or more persons sent by mail are the same in amount and are the highest offered, the first received, as shown by the hour and date noted on the envelope, will be accepted by the manager. In no event may the land be sold or a purchaser declared before the end of the 30 day period for the assertion by contiguous land owners of their preference right of purchase.

(b) Preference right of purchase; declaration of purchaser. The owners of contiguous lands have a preference right, for a period of 30 days after the highest bid has been received, to purchase the land offered for sale at the highest bid price or at three times the appraised price if three times such appraised price is less than the highest bid price. Such preference right may also be asserted at any time prior to the commencement of such period. Such preference right is not extended to the owner or owners of cornering lands.

1. A preference right to purchase must be supported by proof of the claimant's ownership of the whole title to the contiguous lands (that is, he must show that he had the whole title in fee), and must be accompanied by the purchase price of the land.[2]

2. If there is only one qualified preference right claimant, or if there are conflicting qualified preference right claimants and there is an amicable agreement among them, the manager will declare such claimant or claimants the purchasers.

3. Where there is a conflict between two or more persons claiming a preference right of purchase, they will be allowed 30 days from receipt of notice within which to agree among thermselves upon a division of the tracts in conflict by subdivisions. In the absence of an agreement, the Regional Administrator will make a determination equitably apportioning the various subdivisions among the claimants, ordinarily so as to equalize as nearly as possible the tracts they should be permitted to purchase. Where only one subdivisions is offered for sale and it adjoins the lands of two or more preference right claimants, it will generally be awarded to the applicant for the sale if he is a qualified preference right claimant; if he is not it will be awarded to the first qualified person who properly asserts such a preference right within or prior to the 30 day preference right period. The manager will make the award by declaring the appropriate claimant or claimants purchasers of the land.

4. If, by the end of the preference right period, no preference right has been asserted, the sale will be declared closed and the manager may declare the highest bidder the purchaser.

/Circ. 1666, Nov. 19, 1947; Circ. 1693, Aug. 27, 1948/

250.12 Action after purchaser is declared.

(a) Payment of cost of publication by purchaser. If the applicant for the sale is an unsuccessful bidder, the person awarded the land must reimburse and pay directly to him the amount expended for publication of notice and file evidence thereof in the district land office within 10 days from the date he is declared the purchaser. If the evidence is not furnished, the manager will reject the bid and will accept the bid next in order, subject to the same conditions. Where an equitable apportionment of the land is made between two or claimants, pursuant to paragraph (b) of section 250.11, each of the claimants must bear an equal share of the expense.

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[2] Although one who holds a valid adjoining entry may file an application for th sale of lands which are mountainous or too rough for cultivation, he may not assert a preference right of purchase unless he has acquired the whole title to adjoining lands.

(b) The purchaser must, within 10 days after he has been so declared, also file with the manager evidence that he is a citizen of the United States, or if a partnership, evidence of the citizenship of its members. If the purchaser is an unincorporated association, evidence must be filed that such of its officers are citizens. Such associations shall indicate the citizenship of each member. A corporation is required to file a certified copy of its articles of incorporation showing that it is organized under the laws of the United States, or of some State, Territory or possession thereof, and that it is authorized to acquire and hold real estate in the State in which the land is situated, and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.

If any appreciable number of the members of an unincorporated association are aliens or any appreciable percentage of the stock of a corporation is held by aliens, the bid of said association or corporation will be rejected. (R.S. 453, 2478; 43 U.S.C. 2, 1201)
[Circ. 1727, April 5, 1949]

(c) Where the purchaser has fully complied with the regulations in this Part, the manager will issue a cash certificate.
[Circ. 1666, Nov. 19, 1947]

250.13 Appeals. An appeal pursuant to the Rules of Practice (43 CFR, Part 221) may be taken from any decision of the manager to the Director, and, from the decision of the Director to the Secretary. [Circ. 1666, Nov. 19, 1947]

Note: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

Distribution
L-1

Circular No. 1733

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON

CODE OF FEDERAL REGULATIONS
TITLE 43--PUBLIC LANDS: INTERIOR

CHAPTER 1--BUREAU OF LAND MANAGEMENT

PART 108--PATENTS

The last two paragraphs of section 108.4 (Circular 457, September 2, 1926) are deleted and the following is substituted therefor:

Sec. 108.4 Issuance of perfect patent where record does not show that original was signed. * * *

The Bureau of Land Management will cause a new patent to be issued whenever it appears that a patent was regularly issued and the patent record on file in the Bureau of Land Management is imperfect in that it does not contain the name, or the initials, of the signing and the countersigning officers.

(R.S. 453, 2478; 43 U.S.C. 2, 1201)

(Sgd.) Marion Clawson
Director

Approved: May 12, 1949

(Sgd.) C. Girard Davidson
Assistant Secretary of the Interior.

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Not to be taken
from office

Trespass

Circular No. 1734

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington

BUREAU OF LAND MANAGEMENT
DISTRICT LAND OFFICE
JUN 13 1949
BILLINGS, MONTANA

CODE OF FEDERAL REGULATIONS
TITLE 43 - PUBLIC LANDS: INTERIOR
CHAPTER I—BUREAU OF LAND MANAGEMENT
PART 288 - GENERAL TRESPASS REGULATIONS

Office Copy
Replaced by 1976

Part 288 is amended by deleting Section 288.9.

(R. S. 453, 2478; 43 U.S.C. 2, 1201)

(Sgd.) Roscoe Bell,

Associate Director.

Approved: May 19, 1949

(Sgd.) J. A. Krug,

Secretary of the Interior.

Obsolete
See 1825

Office Copy

Circular 1735

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

PART 245—RIGHTS-OF-WAY OVER AND UPON PUBLIC LANDS AND RESERVATIONS OF THE U. S. FOR ELECTRICAL PLANTS AND TRANSMISSION LINES

STIPULATION REQUIRED AS CONDITION PRECEDENT TO APPROVAL OF PERMIT

Paragraph (v) of § 245.21, as amended on October 14, 1948 (13 F. R. 6214), is revised to read as follows:

§ 245.21 *Stipulation required as a condition precedent to the approval of permit.* * * *

(v) To allow the Department of the Interior, in the case of a permit or an easement applied for on or after October 14, 1948, and covering a right-of-way for an electrical transmission line having a voltage of 33 kv. or more, (1) to utilize for the transmission of electrical power any surplus capacity of the line in excess of the capacity needed by the holder of the permit or easement (subsequent referred to in this paragraph as "the permittee") for the transmission of electrical power in connection with the permittee's operations, or (2) to increase the capacity of the line at the Department's expense and to utilize the increased capacity for the transmission of electrical power. Utilization by the Department of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department desires to utilize surplus capacity thought to exist in a line, notification will be given to the permittee and the permittee shall furnish to the Department within 30 days a certificate stating whether the line has any surplus capacity not needed by the permittee for the transmission of electrical power in connection with the permittee's operations, and, if so, the extent of such surplus capacity.

(ii) In order to utilize any surplus capacity certified by the permittee to be available, or any increased capacity provided by the Department at its own expense, the Department may interconnect its transmission facilities with the permittee's line in a manner conformable to approved standards of practice for the interconnection of transmission circuits.

(iii) The expense of interconnection will be borne by the Department, and the Department will at all times provide and maintain adequate switching, relaying, and protective equipment so as to insure that the normal and efficient operation of the permittee's line will not be impaired.

(iv) After any interconnection is completed, the permittee shall operate and maintain its line in good condition; and, except in emergencies, shall maintain in a closed position all connections under the permittee's control between the permittee's line and the interconnecting facilities provided by the Department.

(v) The interconnected power systems of the Department and the permittee will be operated in parallel.

(vi) The transmission of electrical power by the Department over the permittee's line will be effected in such manner and quantity as will not interfere unreasonably with the permittee's use and operation of the line in accordance with the permittee's normal operating standards, except that the Department shall have the exclusive right to utilize any increased capacity of the line which has been provided at the Department's expense.

(vii) The permittee will not be obligated to allow the transmission over its line by the Department of electrical power to any person receiving service from the permittee on the date of the filing of the application for a permit or easement, other than persons entitled to statutory preference in connection with the distribution and sale of electrical power by the Department.

(viii) The Department will pay to the permittee an equitable share of the total monthly cost of maintaining and operating the part of the permittee's line utilized by the Department for the transmission of electrical power, the payment to be an amount in dollars representing the same proportion of the total monthly operation and maintenance cost of such part of the line as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the permittee's line during the month bears to the total capacity in kilowatts of that part of the line. The total monthly cost may include interest and amortization, in accordance with the system of accounts prescribed by the Federal Power Commission, on the permittee's net total investment (exclusive of any investment by the Department) in the part of the line utilized by the Department.

(ix) If, at any time subsequent to a certification by the permittee that surplus capacity is available for utilization by the Department, the permittee needs for the transmission of electrical power in connection with its operations the whole or any part of the capacity of the line theretofore certified as being surplus to its needs, the permittee may modify or revoke the previous certification by giving the Secretary of the Interior 30 months' notice, in advance, of the permittee's intention in this respect. After the revocation of a certificate, the Department's utilization of the particular line will be limited to the increased capacity, if any, provided by the Department at its expense.

(x) If, during the existence of the permit or easement, the permittee desires reciprocal accommodations for the transmission of electrical power over the interconnecting system of the Department to its line, such reciprocal accommodations will be accorded under terms and conditions similar to those prescribed in this paragraph with respect to the transmission by the Department of electrical power over the permittee's line.

(xi) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the permittee and the Secretary of the Interior or his designee.

(31 Stat. 790, 791 as amended; 43 U. S. C. 959, 961)

[SEAL] J. A. KRUG,
Secretary of the Interior.

JULY 18, 1949.

[F. R. Doc. 49-6033; Filed, July 22, 1949; 8:45 a. m.]

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(b) No essential change in the kind or significant reduction in the duration of the training may be made unless recommended by the National Advisory Heart Council and approved by the Director of the National Institutes of Health.

(c) Subject to the regulations of this part and upon application by the institution in each specific instance, the Director of the National Heart Institute, may authorize amounts granted for trainee stipends and allowances to be used for institutional expenses in providing the training, and amounts granted for institutional expenses to be used to pay stipends and allowances.

(d) The fiscal and other records of the institution that relate to the training for which a grant is awarded under this part shall be made available for audit or other reasonable inspection by representatives of the Public Health Service.

(e) Additional conditions may be imposed by the Director of the National Institutes of Health at the time of making a grant if such conditions are reasonably necessary to carry out the purpose of the grant.

§ 64.5 *Conditions of award; grants for trainee stipends and allowances.* Grants awarded to an institution for the payment of stipends and allowances to trainees shall be subject to the following conditions:

(a) No amount may be paid by the institution to any trainee who, by reasons of physical or mental disability or otherwise, will not in the reasonable judgment of the institution be available following such training for research or clinical work related to heart disease.

(b) Unless otherwise approved by the Director of the National Institutes of Health, no amount from the funds granted may be paid by the institution to any trainee either as stipend or allowance, including travel expenses, that exceeds the amount payable under similar circumstances to individuals of similar qualifications or status as National Institutes of Health research fellows under Part 61 of this chapter or as National Heart Institute trainees under Part 63 of this chapter.

(c) No amount shall be paid by the institution to any trainee who does not meet the qualifications required generally by the institution for similar types of training or to any trainee whose nomination by the institution has not been approved by the Director, National Heart Institute, or to any trainee who has failed to demonstrate satisfactory participation in the training in accordance with the usual standards of the institution.

(d) No part of the funds granted may be used as remuneration for, or on account of, services performed by any trainee.

§ 64.6 *Payments to institutions; repayment of unexpended balances.* (a) Payments to an institution from funds granted may be made in advance and shall be in such amounts as are necessary to meet the needs of the institution as to both institutional expenses and payments to trainees.

(b) Funds paid to an institution but not expended in accordance with the regulations in this part shall be returned to the Treasurer of the United States.

Effective date. These regulations shall be effective July 1, 1949.

[SEAL] LEONARD A. SCHEELE,
Surgeon General.

Approved: August 26, 1949.

A. J. ALTMEYER,
Acting Federal Security Administrator.

[F. R. Doc. 49-7208; Filed, Sept. 6, 1949; 8:48 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1736]

PART 161—FEDERAL RANGE CODE FOR GRAZING DISTRICTS

MISCELLANEOUS AMENDMENTS

1. Subparagraph (10) of paragraph (c) of § 161.6 is redesignated as subparagraph (12) and new subparagraphs numbered (10), (11), and (13) are added as follows:

§ 161.6 *Issuance of licenses and permits.* * * *

(c) *Terms and conditions.* * * *

(10) The failure for any two consecutive years to make substantial use of the grazing privileges, authorized under an accepted license or permit, may result in the loss of the dependency by use or priority of the base property in proportion to the failure to use such license or permit.

(11) Non use, in whole or in part, of a license or permit may be authorized by the range manager upon application by the licensee or permittee, after reference to the advisory board for recommendation, for the following reasons: Conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

* * * * *

(13) In order to stabilize livestock operations dependent upon the Federal range, no readjudication of any license or permit will be made on the claim of any applicant or intervener with respect to the dependency by use or priority of the base property where such qualification, upon which the license or permit was issued, has been recognized for a period of three years or more, except in a case where such qualification would otherwise be subject to adjustment under the provisions of this part.

2. Paragraphs (b) and (c) of § 161.8 are amended so as to read as follows:

§ 161.8 *Fees; time of payment; refunds.* * * *

(b) *Regular licenses and permits.* Each regular licensee or permittee will be charged for each head of livestock, for each month covered by the license or permit, a grazing fee for the use of

the range and a range improvement fee. Range improvement fees, upon the recommendation of the district advisory board and approval of the Secretary, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any governmental agency—State or Federal, or any person, association, or corporation. Grazing and range improvement fees will be assessed on the basis of semi-monthly periods, beginning on the first and sixteenth day of the month and ending, respectively, on the fifteenth and the last day of the month. All livestock six months of age or over and allowed on the Federal range, will be counted at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No grazing or range improvement fees will be charged for livestock under six months of age. A minimum annual charge of $1.00 will be made on all regular licenses or permits.

(c) *Crossing permits.* Unless notice is otherwise given, a fee of one-half of a cent per head per day, for cattle and horses, and one-tenth of a cent per head per day, for sheep and goats, will be charged for a crossing permit, which will be issued upon application by any person showing the necessity of crossing the Federal range for proper and lawful purposes: *Provided,* That in cases where the trail to be used is so limited and defined that no material amount of forage will be consumed in transit the permit will be issued without charge: *Provided further,* That no fee will be charged for a crossing permit to the extent that it involves the use of a stock driveway created under section 10 of the stock-raising homestead act of December 29, 1916 (39 Stat. 862; 43 U. S. C. 300).

3. Paragraphs (a), (c), and (f) of § 161.9 are amended so as to read as follows:

§ 161.9 *Procedure in applications, hearings and appeals*—(a) *Filing and consideration of applications; recommendations; service of notice.* Each year the regional grazier will set a date for each district in his region prior to which all applications for grazing licenses or permits in the district must be filed. Failure to file applications before such date will result in their rejection for that year unless reasonable justification for a belated filing is shown. Whenever an application is filed for a license or permit based in whole or in part on a property which has not served as a base for a license or permit during the grazing season immediately preceding such filing, all users who might be directly affected by favorable action on such application will be notified of its filing. All applications for grazing licenses or permits, except those of district advisers, will be considered first by the advisory board of the district in which the license or permit is sought. The advisory board will make its recommendation to the district grazier and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the district grazier will so notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice thereof will be served on the applicant personally either by the district grazier or by such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notice will set out the reason or reasons set forth by the advisory board for the adverse recommendation and will name a place and date, not less than ten days thereafter, when protests against the recommendation will be heard: *Provided, however,* That in any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may, in its discretion, decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

* * * * *

(c) *Allowance or rejection of application by the district grazier; modification; service of notice; appeal to examiner; intervention.* The district grazier is vested with the authority in the light of all facts and circumstances, after first having submitted an application to the district advisory board, to issue or to refuse to issue a grazing license or permit. If the action taken by the district grazier on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, either personally by the district grazier or by such person as may have been designated by him or by registered letter sent to the applicant at the address given in his application. The notice given the particular applicant will advise him of his privilege to file an appeal to an examiner. The appeal must be filed with the regional grazier within fifteen days following the receipt of the notice. The appeal shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. Any party or parties who may be directly affected by the decision on the appeal will be notified by the regional grazier of the filing of the appeal and advised that a written request to intervene in the appeal may be filed. Such a party shall be known and designated as an intervener. When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

The range manager, or any intervener may, within twenty days after receipt of notification that an appeal has been filed, file with the regional administrator, after having served a copy on the appellant, a written motion that the appeal be dismissed for the reason that all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The regional administrator shall advise all other parties in interest that such a motion has been filed.

The appellant, or any other party in interest, may file a written answer within twenty days after service of motion upon him. The regional administrator shall transmit the motion, the proofs of service, and the answers to the examiner who shall rule on the motion, and, if the motion is sustained, dismiss the appeal without prejudice to the appellant's privilege to appeal to the Director, pursuant to paragraph (j) of § 161.9.

* * * * *

(f) *Authority of examiner.* The examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses, to administer oaths, to call and question witnesses, and to make findings of fact, conclusions of law, and a decision. The examiner also shall have authority to take or to cause depositions to be taken whenever the ends of justice would be served thereby, in accordance with the procedure for taking depositions set out in the rules of practice (43 CFR, Part 221). The examiner may stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges, and the same parties or their predecessors in interest. The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted because of the absence of witnesses only in accordance with the rules of practice (43 CFR, Part 221). In other cases continuances may be granted only when the ends of justice will be served thereby.

Continuances will not be granted unless it appears that they are clearly justified and that a timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the other parties. The other parties shall have five days to file an objection to the continuance if they so desire. The examiner will then rule on the request, and, if the request is granted, set a new date for the hearing.

4. Paragraph (d) of § 161.11 is amended so as to read as follows:

§ 161.11 *Procedure for enforcement of rules and regulations.* * * *

(d) *Disciplinary action for violations.* The regional grazier is authorized to reduce or revoke a grazing license or permit or to deny renewal thereof for a clearly established violation of the terms or conditions of the license or permit or for a violation of any of the provisions of the Federal Range Code. Before any license or permit is reduced or revoked, or renewal thereof denied, because of

such a violation, however, the regional grazier will cause the licensee or permittee to be served with a written notice which will set forth the act or acts constituting the violation and an estimate of the amount of damage resulting therefrom. Such notice also will refer to the terms or conditions of the license or permit or to the provision or provisions of the Federal Range Code alleged to have been violated. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked and satisfaction of damages made. The notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

The hearing before the examiner upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The licensee or permittee may appear in his own behalf or by counsel. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due the United States. If upon the hearing of the order to show cause the violation with which the licensee or permittee is charged is established to the satisfaction of the examiner, he will render a decision finding the amount of damages and directing the regional grazier to reduce or revoke the license or the permit, if the facts so warrant.

Upon the failure of the person served in the notice to appear at the time and place designated in the notice, and in the absence of a good and sufficient showing to the examiner of a reason for his failure to appear, the examiner may direct the regional grazier to reduce or revoke the license or permit, as the violations charged in the notice and the amount of damages alleged may warrant.

Appeal from the decision of the examiner on any matter under this section shall be made in accordance with the provisions of paragraphs (j), (k), and (l) of § 161.9, and appeal to the Secretary of the Interior from the decision of the Director shall be made under paragraph (m) of § 161.9.

5. Section 161.12 is amended by adding paragraphs (j), (k), and (l) thereto, as follows:

§ 161.12 *District Advisory Boards.*

* * *

(j) *State Advisory Boards.* Each grazing district advisory board shall select from its members, at the first meeting of the board after an election, two members and two alternates to serve on a State Advisory Board for the State in which the district is located: *Provided*, That where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected.

(k) *National Advisory Board Council.* Each State Advisory Board shall select from its members, at its first meeting after its membership is designated or changed, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council.

(l) *Functions and duties of State Advisory Boards and National Advisory Board Council.* In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Advisory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope (48 Stat. 1269; 49 Stat. 1976, 43 U. S. C. 315 et seq.).

MARION CLAWSON,
Director.

Approved: August 31, 1949.

MASTIN G. WHITE,
Acting Assistant Secretary of the Interior.

[F. R. Doc. 49-7204; Filed, Sept. 6, 1949; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR, Parts 14, 16]

CONVERSION OF CURRENCY

NOTICE OF PROPOSED INSTRUCTIONS IN CASES WHERE MULTIPLE RATES OF EXCHANGE ARE CERTIFIED BY FEDERAL RESERVE BANK OF NEW YORK

Notice is hereby given that, pursuant to section 251 of the Revised Statutes and sections 522 and 624 of the Tariff Act of 1930 (19 U. S. C. 66, 31 U. S. C. 372, 19 U. S. C. 1624), it is proposed to amend §§ 14.3 and 16.4 of the Customs Regulations of 1943 (19 CFR 14.3 and 16.4) to set forth instructions for the conversion for customs purposes of foreign currencies for which multiple rates of exchange are certified by the Federal Reserve Bank of New York, the terms of which proposed amendments, in tentative form, are as follows:

1. Section 14.3 (j) of the Customs Regulations of 1943 (19 CFR 14.3 (j)), as amended, is hereby further amended to read as follows:

(j) Instructions for appraisement of merchandise in cases involving the conversion of foreign currencies for which two or more rates of exchange have been certified by the Federal Reserve Bank of New York are contained in § 16.4 of this chapter.

(Sec. 402, 46 Stat. 708, as amended, secs. 488, 500, 624, 46 Stat. 725, 729, 759; 19 U. S. C. 1402, 1488, 1500, 1624)

2. Section 16.4 of the Customs Regulations of 1943 (19 CFR 16.4), as amended, is hereby further amended by deleting the present paragraph (c), as amended, and by adding paragraphs (c), (d), and (e), as follows:

(c) Whenever the Federal Reserve Bank of New York advises that its certification of rates for a currency is being suspended pending determination of the question whether it will certify multiple rates for that currency, the customs field officers will be so informed. In any case where for the purpose of the assessment and collection of duties it is necessary to determine the proper rate or rates for that currency for a date during the period of suspension of certification by the Federal Reserve Bank, appraisement shall be withheld and liquidation suspended. When certification is resumed by the Bank, the rate or rates certified will be published either in the Treasury Decisions or in Customs Information Exchange circulars. Currency information received from the Bank, or otherwise available, which might be helpful in calculating estimated duties and in appraisement and liquidation will be furnished to the customs field officers. For purposes of calculating estimated duties where multiple rates have been certified by the Bank, the collector shall use the rate or rates appearing to be applicable under the instructions in this section to the type of merchandise involved; and when it is not yet known what certified rate or rates are applicable or no rate has been certified, he shall use the highest rate or combination of rates (i. e., the rate or combination of rates showing the highest amount of United States money), certified or uncertified as the case may be, which could be applicable.

(d) When the Federal Reserve Bank of New York certifies two or more rates of exchange for the currency of any country, those rates will be published. Thereafter when the appraiser and collector are in possession of sufficient information to apply the instructions in this section, they shall proceed, respectively, with the appraisement and liquidation in the case of any importation of merchandise exported on a date for which the Federal Reserve Bank of New York certifies such multiple rates, according to the following procedure:

(1) Except as prescribed in this section, no rate of exchange shall be used for customs purposes under this section other than a rate or rates certified by the Federal Reserve Bank of New York. If there is a proclaimed value of the currency involved which varies by less than 5 per cent from any certified rate otherwise applicable, such proclaimed value shall be used in lieu of such certified rate.

Reserve Stock Office Copy

See No. 1764

OCT 1949
Bureau of Land Management
Montana Land Office
Billings, Montana

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1737]

PART 257—LEASE OR SALE OF SMALL TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL OR BUSINESS SITES

FEE

Section 257.6 is amended to read as follows:

§ 257.6 *Fee.* Effective October 3, 1949, every small tract application must be accompanied by a service fee of $10.00. This fee will be considered as earned and will be retained, regardless of action on the application. No fee will be required with an application for sale, based on an outstanding lease.

(52 Stat. 609; 43 U. S. C. 682a)

ROSCOE E. BELL,
Associate Director.

Approved: September 20, 1949.

MASTIN G. WHITE,
Acting Secretary of the Interior.

[F. R. Doc. 49-7712; Filed, Sept. 23, 1949; 8:46 a. m.]

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See amendment attached

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APR 1950
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Montana Land Office
Billings, Montana

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington 25, D. C.

AC
SUPERVISION
Procedure
Travel

Memorandum

MAR 17 1950

To: Regional Administrators

From: Director

Subject: Circular 1737, Amendment No. 1

Circular 1737, Amendment No. 1, approved March 14, 1950, authorizes the return of the filing fee of $10.00 accompanying small tract lease applications filed after January 23, 1950, during a simultaneous filing period established by an order of classification if no tract is awarded to the applicant as a result of the drawing.

In future the filing fees received with the applications for small tract leases during a simultaneous filing period shall be deposited in the fund 148800, Deposits, Unearned Moneys, Bureau of Land Management, pending the result of the drawing and the offering of the leases for the tracts. Upon offering the lease the filing fee shall be transferred from the fund 148800 to the fund 144599, Fees and Other Charges for Miscellaneous Services, Not Otherwise Classified. Conversely, if award is not made the filing fee shall be refunded to the applicant from the appropriation 14X8800, Unearned Moneys, Bureau of Land Management.

Filing fees for small tracts received subsequent to January 23, 1950, during a simultaneous filing period and deposited in the receipt fund 144599 also will have to be refunded in all cases where an award was not made to an applicant. Since refunds cannot be made from the receipt fund 144599, the refund must be handled as a claim as follows: Schedule of Refunds (Form 4-1125 series) shall be prepared in original and two copies; the original and one copy, together with certificate of deposit number and date reference covering the deposits of the individual items to be refunded shall be forwarded to the Washington Office. The original will be transmitted to the Claims Division, General Accounting Office, for settlement, and the duplicate retained.

On the forms 4-1125 on the line designated "Location," insert Washington, D. C. with your region in parenthesis. On the

line designated "Appropriation or Fund" insert 20X1807, Refunds of Moneys Erroneously Received and Covered. The form 4-1125 must be supported by a statement of facts justifying the refunds. Since the 20X1807 fund is appropriated to the U. S. Treasury Department, no entries shall be made in the regional accounts other than appropriate references on your collection records.

The filing fees accompanying small tract applications during periods other than simultaneous filing periods shall be deposited in the fund 14599 as heretofore.

The Accounting Handbook will be revised accordingly.

Marion Clawson

Director

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Obsolete
See Circ 1764

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1737, Amdt. 1]

PART 257—LEASE OR SALE OF SMALL TRACTS NOT EXCEEDING FIVE ACRES FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL, OR BUSINESS SITES

FEE

Section 257.6 is amended to read as follows:

§ 257.6 *Fee.* Every small tract application must be accompanied by a service fee of $10. This fee will be considered as earned and will be retained, regardless of action on the application, except that where, after January 23, 1950, an application is filed during a simultaneous filing period established by an order of classification, the fee will be returned if no tract is awarded to the applicant as a result of the drawing held. No fee will be required with an application for sale, based on an outstanding lease.

(52 Stat. 609, as amended; 43 U. S. C. 682a)

MARION CLAWSON,
Director.

Approved: March 14, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50-2211; Filed, Mar. 17, 1950; 8:45 a. m.]

Published in Federal Register
Vol. 15, No. 53, of March 18,
1950, page 1543.

DISTRIBUTION - L-1
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73407

Circular No. 1738 Replaced by 2005

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AMENDED BY CIRC. 1796
As to: PART 196.20

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

PART 196—PHOSPHATE LEASES AND USE PERMITS

PHOSPHATE LEASES

Sec.
196.1 Statutory authority.
196.2 Size of leasehold and limitation of acreage holdings.
196.3 Qualifications of applicants.
196.4 Minimum expenditure and lease bond.
196.5 Minimum production.
196.6 Lessee's petition for change in minimum production.
196.7 Application for lease.
196.8 Noncompetitive application; publication; protests.
196.9 Issuance of noncompetitive lease.
196.10 Offer of lands or deposits for lease by competitive bidding.
196.11 Notice of lease offer.
196.12 Action by successful bidder.
196.13 Assignments of leases; subleases.
196.14 Readjustment of terms and conditions at end of twenty-year periods.
196.15 Relinquishment of lease.
196.16 Cancellation of lease.
196.17 Use of silica, limestone or other rock.
196.18 Use permits for additional lands.
196.19 Claims initiated prior to February 25, 1920.

AUTHORITY: §§ 196.1 to 196.19 issued under secs. 9–12, 32, 41 Stat. 440, 441, 450; 30 U. S. C. 211–214, 189.

PHOSPHATE LEASES

§ 196.1 *Statutory authority.* Sections 9 to 12, inclusive, of the act approved February 25, 1920 (41 Stat. 440; 441; 30 U. S. C. 211–214), as amended, authorizes the Secretary of the Interior to lease any phosphate deposits of the United States and lands belonging to the United States containing deposits of phosphates and associated or related minerals, hereinafter called "leased deposits." Invitations to bid for such leases will be made in accordance with the procedure hereinafter set forth. Leases will be issued on Form 4–1110 for periods of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each 20 year period such reasonable readjustment may be made of the terms and conditions thereof as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods.

/Circ. 1722, Jan. 14, 1949/

§ 196.2 *Size of leasehold and limitation of acreage holdings.* Leases may embrace not exceeding 2,560 acres reasonably compact in form. Each lease shall describe the lands involved by legal subdivisions of the public land surveys. No person, association or corporation, may hold at any one time more than 5,120 acres in any one State, or more than 10,240 acres in the United States, whether directly through the ownership of phosphate leases or interests in such leases, or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding such leases or interests therein or both.

/Circ. 1722, Jan 14,1949/

§ 196.3 *Qualifications of applicants.* Leases may be issued to (a) citizens of the United States, (b) associations of citizens, and (c) corporations organized under the laws of the United States or of any State or Territory thereof.

/Circ. 1722, Jan. 14, 1949/

§ 196.4 *Minimum expenditure and lease bond.* (a) An actual bona fide expenditure for prospecting, where necessary, and mine operations, development; or improvement purposes of the amount determined by the Secretary of the Interior will be a condition in each lease as to the minimum basis on which it will be granted, with the requirement that not less than one-third of such expenditure shall be made during the first year, and a like amount each year for the two succeeding years, the expenditure during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years. Except as to the sums required to be expended for prospecting on the leased land, the minimum expenditure requirement may be met, when so authorized in the lease, by expenditures made or to be made off the leased land but for its benefit.

/Circ. 1722, Jan. 14, 1949/

(b) A bond, in such sum as may be fixed in the notice of leasing but in no event less than $5,000, executed by the lessee with approved corporate surety on Form 4–1113 or the lessee's personal bond on Form 4–1114, conditioned upon compliance with the terms of the lease will be required. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond.

/Circ. 1722, Amdt. 2, May 16, 1949/

§ 196.5 *Minimum production.* Each lease will contain appropriate conditions fixing a minimum annual production of the leased deposits beginning with the fourth year from date thereof or payment of a minimum royalty in lieu thereof, except when production is interrupted by strikes, the elements, casualties not attributable to the lessee, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss. When authorized in the lease the minimum production requirements may be satisfied by production from other properties controlled by the lessee and constituting a necessary reserve so located as to be a part of a successful unit operation.

/Circ. 1722, Jan. 14, 1949/

§ 196.6 *Lessee's petition for change in minimum production.* The lessee may request at any time prior to the end of the thirtieth lease month, that the Secretary reduce the amount of the minimum production specified in the lease upon the basis of the showing submitted by the lessee. The petition must be filed in duplicate with the office from which his lease was delivered. It should give, among other relevant information, (a) his estimate of tonnage of mineral phosphate rock and associated or related minerals in the leased land, (b) all available information as to the grade thereof, (c) his plan of operation for the property and adjacent property to be worked therewith, (d) a general statement of the method or methods which he intends to use in mining and processing of the phosphate rock and associated

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Reprint, September 1949, of Circular No. 1722, Jan. 14, 1949, with amendments (Amendments No. 1, Feb. 25, 1949, No. 2, May 16, 1949, and No. 3, July 28, 1949, and amendment made by Circular No. 1727, April 5, 1949).

or related minerals, (e) the estimated rate of its extraction and (f) possible absorption in the markets. Within six months after receipt of this information the Secretary, after considering what would be a reasonable period within which to mine the leased deposits taking into account, where material, the lessee's mining operations on adjacent phosphate land owned or controlled by him, will determine whether the minimum production requirement in the lease shall be changed to a lesser figure than the amount then provided.

/Circ. 1722, Jan. 14, 1949/

§ 196.7 *Application for lease.*[1] Application for lease must be filed in duplicate in the proper district land office or, for lands or deposits in States in which there is no district land office, in the Bureau of Land Management, Washington 25, D. C. The application, if for a noncompetitive lease, must be accompanied by the first year's rental of twenty-five cents per acre for each acre of land included in the lease application. No specific form is required but the application should cover the following points:

(a) Applicant's name and address.

(b) A statement of his interests, direct or indirect, whether as a member of an association or stockholder in a corporation, or otherwise in other phosphate leases or applications therefor on public lands, identifying the same by land office and serial number together with the total amount of acreage so held both in the State in which the lease is desired and in the United States, and a statement that such holdings under said act within the State in which the land is situated, together with the lands applied for, do not exceed in the aggregate 5,120 acres and a like statement with respect to the maximum allowable area of 10,240 acres in the United States.

/Circ. 1722, Jan.14, 1949/

(c) Proof of citizenship; in the case of an individual, by a statement as to whether native-born or naturalized and, if naturalized, date of naturalization, court in which naturalized, and number of certificate, if known; if a woman, whether she is married or single, and if married, the date of her marriage and citizenship of her husband. Associations are required to file a certified copy of their articles of association and the same showing as to the citizenship and holdings of their members as required of an individual and specified herein. A corporation is required to file a certified copy of its articles of incorporation and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied. If 20 percent or more of the stock of any class is owned or controlled by or on behalf of any one stockholder, a separate showing of his citizenship and holdings must be furnished.

/Circ. 1727, April 5, 1949/

(d) Description of the land for which lease is desired, by legal subdivisions or, if unsurveyed, by metes and bounds, connected with a corner of the public survey by course and distance, and, where possible, description of the land by the approximate subdivisions of the future survey.

(e) To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits, (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(f) Each applicant must show in sufficient detail that:

(1) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(2) He intends to explore, mine and develop the property in good faith;

(3) He is financially and otherwise able to comply with the minimum expenditure requirements for exploration, mining and development of the property; and

(4) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

(g) The applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings. Application on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

(h) And in addition, in the case of noncompetitive lease applications, the extent to which further prospecting is necessary before development can reasonably be undertaken and the general exploration program which will be undertaken, the estimated expenditure under such exploration program, and the maximum period of time required for its completion, not to exceed three years.

/Circ. 1722, Jan. 14,1949/

§ 196.8 *Noncompetitive application; publication; protests.* (a) If, upon an examination of the first application filed to lease the lands noncompetitively, and such additional information as the applicant may be required to submit, in support of it, and upon the report of the Geological Survey as to the need for further exploration and any other technical matters submitted to it, the Secretary determines that the applicant is qualified, and that the lands or deposits constitute an acceptable leasing unit and are subject to phosphate lease and that further exploration is necessary before development could reasonably be undertaken, the applicant, as a condition precedent to the issuance of the lease, will be required to publish, at his own expense, once a week for four consecutive weeks in a designated newspaper of general circulation in the county or counties in which the land is situated, a notice, specified by the Secretary, containing the terms upon which the lease will be issued to the applicant in the absence of a protest deemed valid by the Secretary. The applicant will be required to commence publication within 30 days after service of the decision upon him unless he requests reconsideration of the decision within that time.

(b) The notice shall describe the land, specify the rental and rate of royalty to be paid under the lease, state the minimum expenditure and minimum production requirements, together with a general statement as to the exploration program required by the Secretary to be undertaken by the applicant after lease issuance to ascertain that development is feasible under the lease. The notice shall also state (1) that the minimum production requirement will not be reduced or waived at the lessee's request except as provided in § 196.5, 196.6, 191.25 or 191.26, and (2) that the lease will be canceled if apart from or in addition to any other grounds that may exist therefor, production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease. A copy of the notice will be posted in the district land office after receipt by the manager.

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[1] Title 18, U. S. C., sec. 1001, makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(c) A valid protest may be based upon (1) a prior equitable claim, including a mining location, or (2) the fact that there is sufficient interest by qualified applicants to justify offer of lease by competitive bidding. A protest based upon the second ground must be accompanied by the payment of the first year's rental of 25¢ per acre for the land, together with a showing that the protestant has the qualifications of an applicant under § 196.7. In addition, there must be set forth in the protest an offer to reimburse the applicant in whole, or ratably with other similar protestants, for the cost of publishing the notice of the application. Decisions on protests will be made within 30 days after the applicant has submitted proper proof of publication. No application will be rejected on the second ground unless proof is filed that, when directed by the Secretary, payment of the advertising cost has been made or a satisfactory tender is being made and is still being kept open. If the protest is rejected or if the protestant is not the successful bidder when a sale is held, his rental payment will be returned to him.

(d) If the Secretary decides after the receipt of an application or after proof of advertising has been submitted that the land is not available for leasing or that the applicant is not entitled to a lease or that the land should be offered for competitive bidding, the rental payment will be returned to the applicant and his application for a noncompetitive lease rejected.

[Circ. 1722, Jan. 14, 1949]

§ 196.9 ***Issuance of noncompetitive lease.*** **The applicant should file with the district land office, within 30 days after publication has been completed, proof thereof, together with a lease duly executed by him in quintuplicate on Form 4-4110 and the bond required by § 196.4 (b). In the absence of protest or of a protest deemed valid and if all else is regular, the lease will be issued and dated as of the first day of the month following its issuance, unless the applicant requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the lessee need not deposit the executed lease and bond until the land has been surveyed and the plat of such survey accepted and officially filed. A survey will be made at the expense of the Government. If the applicant has not reported compliance with the requirements of the decision issued under § 196.8, within 120 days of its receipt by him, the** annual rental deposited by the **applicant will be covered into the Treasury and the applicant advised that the case has been closed.**

[Circ. 1722, Jan. 14, 1949]

§ 196.10 *Offer of lands or deposits for lease by competitive bidding.* If the Secretary of the Interior, upon the report of the Geological Survey, with respect to an application for lease or otherwise, as to the need for further exploration, royalty rates, minimum expenditure and production requirements and any other technical matters submitted to it, determine that specific lands or deposits which constitute an acceptable leasing unit are **subject to phosphate lease without the need of further exploration before development could reasonably be undertaken, the offer of lease will be made on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bids either at public auction or by sealed bids as provided in the notice of sale.**

[Circ. 1722, Jan. 14, 1949]

§ 196.11 *Notice of lease offer.* Notice under the preceding section, of the offer of the lands or deposits for lease will be given by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, and in such other publications as the Director, Bureau of Land Management, may authorize. The notice will be published at the expense of the Government. A copy of the notice will be posted in the proper district land office during the period of publication. This notice will state the place and time of sale, the description of the land and where a detailed statement of the terms and conditions of the lease offer may be obtained. The detailed statement of terms and conditions will provide (a) that the minimum production requirement will not be reduced or waived at the lessee's request except as provided in §§ 196.5, 196.6, 191.25, or 191.26, or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss; (b) that the lease will be canceled if production, or the construction of production facilities, including processing plants, is not commenced by the beginning of the fourth year of the lease; and (c) the manner in which bids may be submitted, information as to rental, royalty, minimum production, minimum investment and all other terms and conditions of the sale.

The right is reserved in the public interest, to reject any and all bids; and should a bid be rejected, the deposit made by the bidder will be returned. All bidders at any public sale of leases are warned against committing any act by intimidation, combination, or unfair management, to hinder or prevent bidding thereon, in violation of 18 U. S. C. sec. 1860.

[Circ. 1722, Amdt. 3,
July 28, 1949]

§ 196.12 *Action by successful bidder.* The successful bidder at a sale by public auction must deposit with the manager of the district land office or other officer conducting the sale on the day of sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check, money order, or cash, for one-fifth of the amount bid by him; evidence of qualifications as prescribed in §§ 196.7 (b), (c), (g) and (h), if a current showing in that regard has not been filed. If the land is surveyed, the successful bidder will be allowed 30 days from date of auction or where sealed bids are submitted, 30 days from receipt of notice that his bid has been **accepted within which (a) to file in the proper land office a lease, duly executed by him, in quintuplicate, on Form 4-1110 and the bond required by § 196.4 (b); and (b) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with requirements (a) and (b) in this section until the land has been surveyed and the plat of such survey accepted and officially filed. The survey will be made at the expense of the Government. If the bidder fails to comply after due service of notice, that portion of his deposit representing the minimum required to be deposited with the bid shall be held as liquidated damages and disposed of as other receipts under the Mineral Leasing Act.**

[Circ. 1722, Jan. 14, 1949]

§ 196.13 *Assignments of leases; subleases.* Leases may be assigned or subleased in whole or in part to any person or corporation qualified to hold such leases. All instruments of transfer of a lease or of an interest therein including assignments of record title, subleases, operating agreements and working or royalty interests, must be filed for approval within 90 days from the date of final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease applicant by § 196.7 (b), (c), (f) and (g). If the instruments fail to describe the true consideration therefor, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection, If a bond is necessary it must be furnished. Assignments of record title interests, including operating agreements, must be filed in triplicate. A single executed copy of all other instruments or transfer is sufficient. An assignment of such leases shall take effect the first day of the month following its final approval by the Director, Bureau of Land Management, or if the assignee requests, the first day of the month of the approval.

The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the effective date of the approval of the assignment of sublease. If the assignment or sublease is not approved, their obligations to the United States shall continue as though no such assignment or sublease had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any term in the assignment or sublease to the contrary.

The lease account must be in good standing before approval of an assignment will be given.

/Circ. 1722, Jan. 14, 1949;
Amdt. 1, Feb. 25, 1949/

§ 196.14 *Readjustment of terms and conditions at end of twenty-year periods.* The terms and conditions of a lease may be readjusted at the end of each twenty-year period succeeding the date of the lease. Prior to the expiration of that period, the lessee will be advised of the reasonable readjustment of terms proposed by the Department or notified that no readjustment is to be made for the next period. The lessee may file his consent to such proposed readjustment or inform the Department as to the terms which are unsatisfactory. After considering the suggestions of the lessee, the Secretary shall make his determination as to the reasonable readjustment of terms to be effective for the twenty-year period under consideration.

/Circ. 1722, Jan. 14, 1949/

§ 196.15 *Relinquishment of lease.* Upon payment of all rentals, royalties and other debts due and payable to the lessor, and upon payment of all wages or moneys due and payable to the workmen employed by the lessee, the lessee may surrender the entire lease at any time during the first three years of the lease. The lessee may during the first three years of the lease, upon a satisfactory showing that the public interest will not be impaired, surrender any legal subdivision or subdivisions of the area included within the lease. In no case will such lease be so terminated in whole or in part until and unless the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered thereby. The surrender of all or part of a lease after the third year may be permitted in the discretion of the Secretary and only if the conditions specified in this section have been satisfied. A surrender must be by a relinquishment filed, in triplicate, in the proper land office. A relinquishment upon its approval shall take effect as of the date it is filed.

/Circ. 1722, Jan. 14, 1949/

§ 196.16 *Cancellation of lease.* If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 196.14, or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act, provided, that, as to any default occurring under a lease issued noncompetitively not corrected prior to the commencement of production, the Secretary may cancel such lease without institution of such court proceedings. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause or forfeiture, or for the same cause occurring at any other time.

/Circ. 1722, Jan. 14, 1949/

§ 196.17 *Use of silica, limestone or other rock.* Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of the act shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the leased deposits or deposits from other lands upon payments of such royalty as may be determined by the Secretary of the Interior, which royalty may be stated in the lease when issued, or, may be provided for by an attachment to the lease to be duly executed by the lessor and the lessee.

/Circ. 1722, Jan. 14,1949/

§ 196.18 *Use permits for additional lands.* (a) A lessee may be granted a right to use the surface of not exceeding 80 acres of unappropriated and unentered public land not included within the boundaries of a national forest as may be necessary for the proper extraction, treatment, or removal of the leased deposits. The annual charge for the use of such land will be not less than $1.00 per acre or fraction thereof.

(b) Applications for permits for such additional land shall be filed in the office specified in § 196.7. Such applications must set forth the specific reasons why the additional land is necessary to the lessee for the use named, describe the land desired in accordance with § 196.7 (d), and also set forth the reasons why the land is desirable and adapted to the uses named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated. The application must also contain an agreement to pay the annual charge prescribed in the permit. Use permits will be issued on Form 4-1111 dated as of the first day of the month after its issuance unless the lessee requests that it be dated the first day of the month of issuance.

/Circ. 1722, Jan. 14,1949/

§ 196.19 *Claims initiated prior to February 25, 1920.* Section 37 of the act of February 25, 1920 (41 Stat. 451; 30 U. S. C. 193), provides that thereafter the deposits of phosphates described in the act may be disposed of only in the manner provided by the act, "except as to valid claims existent at date of passage of this act, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under said laws, including discovery." Those claims initiated under the pre-existing law may go to patent which, at the date of the act, were valid mining locations, duly made and maintained as such on lands subject to such location at the date initiated.

/Circ. 1722, Jan. 14, 1949/

Effective date. These regulations shall become effective 30 days after their publication in the FEDERAL REGISTER. 2/

2/ Published in the Federal Register January 29, 1949 (V. 14, p. 411).

NOTE: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

UNITED STATES
DEPARTMENT OF THE INTERIOR
J. A. KRUG, Secretary
BUREAU OF LAND MANAGEMENT
MARION CLAWSON, Director

Obsolete
Amended
by Cir 1811

Replaced by
Circular 1948 (11)58

1739

THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

REVISED TO OCTOBER 1, 1949

A CENTURY OF CONSERVATION

1849 1949

March 3, 1849

OCTOBER 1949

WASHINGTON 25, D. C.

PREFACE

Range management in grazing districts must conform to the Federal Range Code which constitutes the rules and regulations approved by the Secretary of the Interior in accordance with the provisions of the Taylor Grazing Act. Much progress has been accomplished since 1934 in the refinement of the regulations for grazing district administration. Procedures have been established and revised from time to time as experience showed that the Code should be changed to make more effective the management of the range resources in the grazing districts.

Much recognition should be given to the Grazing District Advisory Boards for the time and energy that they have contributed in studying the range management problems in grazing districts, and for their recommendations to the Secretary of the Interior with respect to provisions needed in the Code to make it practical and workable on the range. In the revisions approved by the Department August 31, 1949, there was included a provision for State Advisory Boards and a National Advisory Board Council. In addition to serving on their respective grazing district Advisory Boards, they shall consider and make recommendations on grazing administration policies or problems of state and national scope, respectively.

Attorneys know the regulations as the Federal Range Code for Grazing Districts, 43 CFR, Part 161. Livestock operators know the regulations by the short title, the Federal Range Code.

Marion Clawson

Director

Circular No. 1739

TITLE 43—PUBLIC LANDS:
INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

PART 161--THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

161.1 Introductory; basic policy and plan of administration.

161.2 Definitions.

161.3 Qualifications of applicants.

161.4 Classification of base properties.

161.5 Rating and classification of Federal range.

161.6 Issuance of licenses and permits.

161.7 Transfers of base properties and licenses or permits.

161.8 Fees; time of payment; refunds.

161.9 Procedure in applications, hearings, and appeals.

161.10 General rules of the range.

161.11 Procedure for enforcement of rules and regulations.

161.12 District Advisory Boards.

161.13 Local associations of stockmen.

161.14 Construction and maintenance of improvements on the Federal range.

161.15 Special rules for grazing districts.

161.16 Penal provision.

161.17 Saving clause.

Reprint of the Federal Range Code for Grazing Districts, as amended. Sections 161.6(c)(10), (11) and (13), 161.8(b) and (c), 161.9(a), (c) and (f), 161.11(d), and 161.12(j), (k) and (l) were amended by Circular No. 1736 of August 31, 1949.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

161.1 Introductory; basic policy and plan of administration.

(a) Purposes; general requirements. Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the public domain will be required of all users.

(b) Preference applicants. Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner provided in this section. Provision will be made for other applicants so far as Federal range remains available.

(c) Permits; temporary licenses; termination; revocation. Permits within the meaning of section 3 of the act may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing, a recommendation thereon made by the advisory board, and approval thereof given by the range manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. During the period prior to the issuance of permits, the issuance of temporary licenses will be continued. Upon the issuance of a permit within any district or portion thereof, any outstanding license or part thereof which has been granted on the basis of the qualifications on which the permit is based will be terminated. Licenses and permits will be revocable for violations of the terms thereof or for a violation of any provision of the Federal Range Code for Grazing Districts, as provided in this part. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b)

161.2 Definitions. Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management, unless the context otherwise requires:

(a) The act means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315--315m, 315n--315o-1), and all amendments thereto.

(b) The Federal Range Code for Grazing Districts means all of the rules and regulations pertaining to the administration of grazing districts.

(c) Federal range means land owned, leased, or otherwise controlled by the United States and administered by the Bureau of Land Management, Provided, That land under the control of another agency and administered by the Bureau of Land Management under cooperative agreement may be excluded from the scope of this definition by the agreement.

(d) Property means privately owned or controlled land or water used in range livestock operations.

(e) Base property means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(f) Forage land means land the principal use of which is the production of natural or cultivated feed for livestock.

(g) Land dependent by use means forage land which is of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the 5-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years in connection with substantially the same part of the public domain, now part of the Federal range, except that in any area placed within a grazing district after June 28, 1938, or in any area added to an existing grazing district after that date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a base property or properties during the priority period in such manner as would, in the absence of other factors, serve to invest the property with the attribute of dependency by use, but such livestock operation subsequently ceased using such property or properties and used other base property or properties in such manner as to invest them also with dependency by use, only the latter property or properties shall be considered as dependent by use unless the former are dependent by use by reason of use by another livestock operation, Provided further, That in no event shall any land be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year from the date when the public land used in creating the dependency by use first became a part of a grazing district, except that in cases in which the lands used in creating dependency by use of a base property became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date.

The extent of the dependency by use of land shall be subject to the following:

(1) The dependency by use in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the public lands which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the dependency by use is diminished by withdrawal, appropriation, selection, or otherwise, the dependency by use shall diminish proportionately.

(3) Whenever dependency by use of more than one base property was created by the use of all or a part of certain range which was used jointly or at different seasons of the year by one or more other livestock operations in such a manner as to invest another base property or properties with the attribute of dependency by use, the relative dependency by use of each of the properties shall be proportionate to the average annual use made of the range by each of the operations.

(h) Land dependent by location means forage land which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(i) Animal-unit month, as applied to lands that are base properties, means the amount of natural or cultivated feed necessary for the complete sustenance of one cow for a period of one month; as applied to Federal range, it means that amount of grazing privileges represented by the grazing of one cow for a period of one month. For the purpose of this definition, one cow will be considered the equivalent of one horse or five sheep or five goats.

(j) Carrying capacity means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(k) Full-time water means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(l) Prior water is water which, during all or a substantial part of the five-year period immediately preceding June 28, 1934 (referred to in this part as the "priority period"), was used to service certain public range within the service area of the water for a livestock operation that was established, permanent, and continuing, and which, during the period of such use, normally involved the grazing of livestock on the same areas of public land for a certain period or periods of each year, except that in any area placed within a grazing district or added to an existing district after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be, Provided, That in any case in which a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, serve to invest such water with the attribute of priority, but such livestock operations subsequently ceased using such water or waters and used other water or waters in such manner as to invest them also with priority, only the latter water or waters shall be considered as prior unless the former are prior because of use by another livestock operation, Provided further, That in no event shall any water be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district, except that in cases wherein such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

The extent of the priority of water shall be subject to the following:

(1) The priority in no event shall exceed the average annual amount of forage that was customarily and properly utilized by the livestock operation during the priority period on that part of the lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(2) In the event that the area of Federal range which was used in creating the priority is diminished by withdrawal, appropriation, selection, or otherwise, the priority of the water shall diminish proportionately.

(m) Service area means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(n) Free-use applicant means an applicant who resides in the immediate neighborhood of Federal range and who owns livestock kept for domestic purposes. "Livestock kept for domestic purposes" means livestock whose products are consumed or whose work is used directly and exclusively by the family of the applicant. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.3 Qualifications of applicants.

(a) Definition of qualifications. An applicant for a grazing license or permit is qualified if engaged in the livestock business and:

(1) Is a citizen of the United States, or

(2) Has filed a declaration of intention to become a citizen: Provided, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any

satisfactory reason for such failure, shall be disqualified to receive a license or permit or any renewal thereof until he has actually attained citizenship, and any existing license or permit held by such person shall become void at the end of the grazing season during which the disqualification arises, or

(3) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under subparagraph (2) of this paragraph.

(b) Effect of disqualification arising through operation of law. Notwithstanding the above provisions of this section, the acquisition of rights in base property by an unqualified applicant through operation of law or testamentary disposition will not affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, to the extent based on such property, for a period of two years after such acquisition. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

161.4 Classification of base properties. For the purpose of determining the proper use of the base properties of all applicants and their relative dependence upon the Federal range, land and water conditions and other factors affecting livestock operations in the area will be considered and determined according to customary use and best practices for good range management. Base properties will be classified as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

(sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.5 Rating and classification of Federal range.

(a) Carrying capacity; seasons and maximum annual period of use. For the purpose of stabilizing the livestock industry, determining the proper use of the Federal range, and other purposes, the carrying capacity of each administrative unit or area in a grazing district will be rated, and each will be classified for the proper season, or seasons, if necessary, of its use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range lying therein during any one year.

(b) Wildlife; allowance for maintenance. In each grazing district a sufficient carrying capacity of Federal range will be provided, following consultation with and the advice of wildlife interests, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) Segregation of ranges for particular kinds of livestock. When the proper use of the Federal range or an orderly administration of the act requires it, certain areas may be designated for use exclusively by a certain kind or class of livestock. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.6 Issuance of licenses and permits.

(a) Free-use licenses and permits. Free-use licenses or permits first will be issued to free-use applicants for not to exceed the number of livestock kept for domestic purposes. Such livestock shall be grazed on Federal range in the immediate neighborhood of the residence of the licensee or permittee. (Sec. 5, 48 Stat. 1271; 43 U.S.C. 315d)

(b) Regular licenses and permits; order of issuance; number of livestock. Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(1) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(2) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

(3) To other applicants, licenses or permits for the number of livestock for which range is available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

After licenses or permits have been issued on the basis of the foregoing, any licensee or permittee may, within the discretion of the range manager, and on written order by him, be allowed to use the amount of Federal range grazing privileges represented by his license or permit over any period of time within the season or seasons for which the Federal range is classified as proper for use, Provided,

(i) Such period does not exceed the maximum period of time for which any licensee or permittee is allowed to use the Federal range during any one year;

(ii) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(iii) Such use will not be detrimental to the Federal range; and

(iv) Such use will not adversely affect other licensees or permittees. (Sec. 3, 48 Stat. 1270; 43 U.S.C. 315b)

(c) Terms and conditions. The issuance and continued effectiveness of all regular licenses and permits will be subject to the following conditions and requirements:

(1) No license or permit will be issued to any applicant unless he is able to show that he possesses adequate feed to support his licensed or permitted livestock during the period of time for which they are to be off the Federal range.

(2) No license or permit will provide for the grazing of livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the carrying capacity of the range to be used.

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately.

(6) If at any time during the life of a license or permit the holder thereof ceases to make substantial use of his base property in connection with his year-round livestock operation, the license or permit will be subject to a proportionate reduction.

(7) If at any time during the life of a license or permit the holder thereof loses ownership or control either of all or a part of his base property or of all or a part of such other lands or grazing privileges as are necessary to his year-round livestock operation, and fails within a reasonable time, as directed by the range manager after submission of the matter to the advisory board for recommendation, to obtain ownership or control of other base property, lands or grazing privileges sufficient to insure such a year-round operation, the license or permit will be subject to a proportionate reduction.

(8) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(9) In the event of failure for any two consecutive years either to offer a base property in an application for a license or permit, or to accept a license or permit offered pursuant to such an application, such base property will lose its dependency by use or priority.

(10) The failure for any two consecutive years to make substantial use of the grazing privileges, authorized under an accepted license or permit, may result in the loss of the dependency by use or priority of the base property in proportion to the failure to use such license or permit.

(11) Non-use, in whole or in part, of a license or permit may be authorized by the range manager upon application by the licensee or permittee, after reference to the advisory board for recommendation, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit because of a violation of any of the provisions of the Federal Range Code for Grazing Districts may result in the loss of the dependency

by use or priority of the base property upon which the license or permit is based. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

(13) In order to stabilize livestock operations dependent upon the Federal range, no readjudication of any license or permit will be made on the claim of any applicant or intervener with respect to the dependency by use or priority of the base property where such qualification, upon which the license or permit was issued, has been recognized for a period of three years or more, except in a case where such qualification would otherwise be subject to adjustment under the provisions of this part.

(d) *Applicants having more than one class of property; reductions; allotments; agreements*. Nothing contained in this section will prevent an applicant who owns or controls properties in more than one class from having such properties considered separately in the order and manner set forth in this section. If necessary to reach the carrying capacity of any parts of the Federal range after licenses or permits have been issued, reductions on an equal percentage basis will be imposed on licensees or permittees so far as their grazing activities involve the use of such parts. Reductions in all cases will be made by reducing the numbers of livestock or the time on the Federal range area involved, or by both methods, *Provided*, That the regional administrator may recommend, for the approval of the Secretary of the Interior, a limit below which no license or permit in that area will be reduced. Allotments of Federal range will be made to licensees or permittees when conditions warrant, and divisions of the range by agreement or by former practice will be respected and followed where practicable. Increases in carrying capacity will be participated in by existing licensees and permittees to the extent of their respective qualifications. Licenses or permits to use any range available thereafter may be granted to other applicants. (Sec. 2, 48 Stat.1270; 43 U.S.C. 315a)

(e) *Administration of lands additionally available*. Any land added to a grazing district, or otherwise made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4), the revocation of a withdrawal, or the cancellation or relinquishment of a homestead entry or claim, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management. (Secs. 2, 3, 48 Stat. 1270; 43 U.S.C. 315a, 315b) (52 Stat. 1033; 43 U.S.C. 315m-1--315m-4)

(f) Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940. Any licensee or permittee who enters military service, as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179: 50 U.S.C. 511 (1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the range manager an application, in triplicate, the original of which shall be sworn to before a notary public or other officer authorized to administer oaths in the State in which the applicant resides, or before the officer in immediate command and holding a commission in the branch of the Service in which the applicant is engaged, which shall set forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the range manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the range manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, such a temporary license shall be revocable as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the range manager on an application for suspension or termination of a license or permit may be appealed by the applicant, licensee, or permittee to an examiner of the Bureau of Land Management, and from his decision to the Director of the Bureau and to the Secretary of the Interior, respectively. The procedure in such appeals shall conform as nearly as practicable to the procedure prescribed in section 161.9. (Secs. 2, 3, 9, 48 Stat. 1270, 1271; 43 U.S.C. 315a, 315b, 315h) (Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561, 567)

161.7 Transfers of base properties and licenses or permits.

(a) Transfer of base property: effect. A transfer of a base property, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if otherwise properly qualified, to all or to such part of a license or permit as is based on the property transferred, and the original license or permit will be terminated or decreased by such transfer. In any instance in which a transfer, or a different vesting in any manner, of a leasehold interest in land may result in an interference with the stability of livestock operations or with proper range management, such land will lose its dependency by use or dependency by location, as the case may be, upon a find to that effect by the regional administrator, after reference of the matter to the district advisory board for its recommendation.

(b) Transfer of a license or permit; limitations; effects; consent of owner or encumbrancer. Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow a license or permit based on ownership or control of land to be transferred to other land or a license or permit based on ownership or control of water to be transferred to other water within the same service area, Provided, That such transfer will not interfere with the stability of livestock operations or with proper range management and will not affect adversely the established local economy, Provided further, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the base property from which the transfer is to be made, except that when the applicant for such transfer is a lessee without whose established livestock operations such property would not have dependency by use or priority, such consent will not be required. Upon the allowance of a transfer under this paragraph, the base property from which the transfer is made shall lose its dependency by use or priority to the extent of the license or permit transferred.

(c) Transfer of dependency by use on same land. Whenever a licensee or permittee owns or controls land dependent by use which has a carrying capacity in excess of that necessary for the support of the licensed or permitted livestock during that period of the year for which they are to be kept on such land, the excess land may be disposed of or may be used for purposes other than the support of such livestock; upon application by the licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow the dependency by use allocable to such land to be transferred to that part which continues to be used for the support of such livestock Provided, That no such transfer will be allowed without the written consent of the owner or owners and any encumbrancers of the land from which the transfer is to be made. Upon the allowance of a transfer under this paragraph, the land from which the transfer is made shall lose its dependency by use. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.8 Fees; time of payment; refunds.

(a) Free-use licenses and permits. No fee will be charged for the issuance of a free-use license or permit.

(b) Regular licenses and permits. Each regular licensee or permittee will be charged for each head of livestock, for each month covered by the license or permit, a grazing fee for the use of the range and a range improvement fee. Range improvement fees, upon the recommendation of the district advisory board and approval of the Secretary, may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any governmental agency--State or Federal, or any person, association, or corporation. Grazing and range improvement fees will be assessed on the basis of semi-monthly periods, beginning on the first and sixteenth day of the month and ending, respectively, on the fifteenth and the last day of the month. All livestock six months of age or over and allowed on the Federal range, will be counted at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No grazing or range improvement fees will be charged for livestock under six months of age. A minimum annual charge of $1.00 will be made on all regular licenses or permits.

Note: Notice dated August 18, 1947 (12 F.R. 5731) was given that effective August 6, 1947, and pursuant to the act of August 6, 1947 (61 Stat. 790) a grazing fee of six cents per animal unit month and a range-improvement fee of two cents per animal unit month will be charged each regular licensee or permittee for each month of the grazing period covered by the licenses or permits, as follows:

1. Grazing fee - six cents per head for cattle and horses, one and one-fifth cents per head for sheep and goats.

2. Range-improvement fee - two cents per head for cattle and horses, two-fifths cent per head for sheep and goats.

Provided, That as to licenses or fee notices issued prior to August 6, 1947, three-fourths of any collections made thereunder on or after August 6 shall be considered as from grazing fees and one-fourth as from range-improvement fees, and no increase in fees shall be effected hereunder as to such licenses or fee notices until the next license or fee notice is issued.

(c) Crossing permits. Unless notice is otherwise given, a fee of one-half of a cent per head per day, for cattle and horses, and one-tenth of a cent per head per day, for sheep and goats, will be charged for a crossing permit, which will be issued upon application by any person showing the necessity of crossing the Federal range for proper and lawful purposes: Provided, That in cases where the trail to be used is so limited and defined that no material amount of forage will be consumed in transit the permit will be issued without charge: Provided further, That no fee will be charged for a crossing permit to the extent that it involves the use of a stock driveway created under section 10 of the stock-raising homestead act of December 29, 1916 (39 Stat. 862; 43 U.S.C. 300).

(d) Payment of fees; reduction or increase in numbers; extension of periods of use. All fees for crossing permits shall be paid at the time of the issuance of the permit. Payments of fees for regular licenses or permits shall be made prior to the beginning of each grazing period shown on the license or permit. Licenses or permits will be effective only when all fees due thereunder have been paid. No license or permit shall be issued or renewed until payment of all amounts found to be due to the United States under the Federal Range Code for Grazing Districts has been made. Upon application by a transferee of any property or part thereof on the basis of which a license or permit has been issued, a new license or permit representing that part of the grazing privileges to which he may thereby become entitled shall be issued to him. In case of such transfer, the transferor shall not be entitled to a refund of any portion of the fees that have been properly paid and that are applicable to the period subsequent to the transfer.

A licensee or permittee will be required to make payment of fees in accordance with the terms of the license or permit unless he notifies the range manager in writing, more than thirty days before the effective date of any grazing period shown, that he desires to make temporary use of the grazing privileges in a manner other than that shown in the license or permit. Such change will be allowed if due to annual fluctuations ordinarily occurring in livestock operations or to the necessity of conserving or protecting the range. When the requested change is due to financial reasons, such as foreclosure, or other reasons beyond the licensee's or permittee's control, it may be granted for one year or longer, after reference to the advisory board for recommendation, and the approval of the range manager. Fee notices in each case will issue accordingly.

Upon application by a licensee or permittee, and after reference to the advisory board for recommendation, the range manager may allow an extension of the applicant's period or periods of use of the Federal range during any year or season thereof. A receipted supplemental fee notice covering the additional grazing privileges will constitute authority to use the range for the extended period.

(e) Refunds. No refund of fees properly paid will be made because of a failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(1) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Secretary of the Interior will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period as long as the emergency exists.

(2) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be made under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.).

(3) When a license or permit is suspended under section 501 (2) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1187; 50 U.S.C. 561 (2)), any fees that have been paid for the period of suspension will be refunded and any fees that are or that may become due for such period will be remitted. (Secs. 3, 5, 6, 48 Stat. 1270--1272; 43 U.S.C. 315b, 315d, 315e)(Secs. 501, 507, 54 Stat. 1187, 1188; 50 U.S.C. 561 (2), 567)

161.9 Procedure in applications, hearings and appeals.

(a) Filing and consideration of applications; recommendations; service of notice. Each year the regional administrator will set a date for each district in his region prior to which all applications for grazing licenses or permits in the district must be filed. Failure to file applications before such date will result in their rejection for that year unless reasonable justification for a belated filing is shown. Whenever an application is filed for a license or permit based in whole or in part on a property which has not served as a base for a license or permit during the grazing season immediately preceding such filing, all users who might be directly affected by favorable action on such application will be notified of its filing. All applications for grazing licenses or permits, except those of district advisers, will be considered first by the advisory board of the district in which the license or permit is sought. The advisory board will make its recommendation to the range manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable, the range manager will so notify the applicant by ordinary mail. If the recommendation is to any extent adverse, notice thereof will be served on the applicant personally either by the range manager or by such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notice will set out the reason or reasons set forth by the advisory board for the adverse recommendation and will name a place and date, not less than ten days thereafter, when protests against the recommendation will be heard: Provided, however, That in any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may, in its discretion, decide that a protest meeting be not held; whereupon, the range manager shall act upon the recommendation of the board as its final recommendation.

(b) Hearing of protests; reconsideration by advisory board; service of notice. At the dates and places fixed for hearing protests any party in interest may appear, either in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the range manager. If such recommendation is favorable to the applicant, and the range manager approves, he will notify the applicant thereof by ordinary mail. If the recommendation is to any extent adverse, and the range manager approves, a notice giving the reason or reasons therefor will be served on the applicant either personally by the range manager or such person as may have been designated by him, or by registered letter sent to the applicant at the address given in his application. Such notices will constitute the range manager's final decisions for purposes of appeal.

(c) Allowance or rejection of application by the range manager; modification; service of notice; appeal to examiner; intervention. The range manager is vested with the authority in the light of all facts and circumstances, after first having submitted an application to the district advisory board, to issue or to refuse to issue a grazing license or permit. If the action taken by the range manager on any application is substantially different from that recommended by the advisory board, a notice including a recital of the specific reasons for the action taken will be served on the applicant and on any other applicant or applicants adversely affected by such action, either personally by the range manager or by such person as may have been designated by him or by registered letter sent to the applicant at the address given in his application. The notice given the particular applicant will advise him of his privilege to file an appeal to an examiner. The appeal must be filed with the regional administrator within fifteen days following the receipt of the notice. The appeal shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. Any party or parties who may be directly affected by the decision on the appeal will be notified by the regional administrator of the filing of the appeal and advised that a written request to intervene in the appeal may be filed. Such a party shall be known and designated as an intervener. When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

The range manager, or any intervener may, within twenty days after receipt of notification that an appeal has been filed, file with the regional administrator, after having served a copy on the appellant, a written motion that the appeal be dismissed for the reason that all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The regional administrator shall advise all other parties in interest that such a motion has been filed.

The appellant, or any other party in interest, may file a written answer within twenty days after service of motion upon him. The regional administrator shall transmit the motion, the proofs of service, and the answers to the examiner who shall rule on the motion, and, if the motion is sustained, dismiss the appeal without prejudice to the appellant's privilege to appeal to the Director, pursuant to paragraph (j) of section 161.9.

(d) Cancellation of licenses or permits; service of appeal to examiner. Licenses or permits will be subject to cancellation to the extent that they have been improperly issued. In any case in which it shall appear to the Bureau of Land Management that a license or permit confers grazing privileges in excess of those properly allowable under the act and the Federal Range Code for Grazing Districts, the range manager will notify the licensee or permittee that the license or permit is thereby held for cancellation either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such cancellation should not be made final. Such notice will set forth fully the reasons for the proposed cancellation and will be served on the licensee or permittee either personally by the range manager or by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. In case of failure of the licensee or permittee to show cause within the fifteen days allowed, the license or permit will be canceled to the extent indicated in the notice. The range manager will consider any cause shown and, if satisfied of its sufficiency, will close the case. If the range manager is not satisfied that sufficient causes have been shown, he will notify the licensee or permittee that the cancellation will be made final unless an appeal to an examiner of the Bureau of Land Management is filed within fifteen days from receipt of notice. Such notice will be served on the licensee or permittee either personally by the range manager of by such person as may have been designated by him or by registered mail sent to the licensee or permittee at his last address of record. The appeal must be filed with the regional administrator and shall be accompanied by specifications of error setting forth in a clear and concise manner the matters upon which it is based. So far as practicable, the appeal thereafter will follow the procedure prescribed in the following paragraphs of this section, except that any decision by the range manager or the examiner on a matter arising under this paragraph will not become effective pending the disposition of a timely appeal to the examiner, the Director or the Secretary of the Interior, as the case may be.

(e) Fixing of place and date for hearing before examiner on appeal; notice. Upon the filing of an appeal and specifications of error, the regional administrator will notify the Chief Examiner, naming a place within or near the district at which a hearing will be held. The Chief Examiner will then advise the regional administrator of the date of hearing, which will be not less than ten days after the date of the filing of the appeal, and the regional administrator thereupon will notify the appellant, and all parties who may be directly affected by the decision on the appeal, of the time and place of hearing, which shall be held by an examiner designated by the Director of the Bureau of Land Management.

(f) Authority of examiner. The examiner is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses, to administer oaths, to call and question witnesses, and to make findings of fact, conclusions of law, and a decision. The examiner also shall have authority to take or to cause depositions to be taken whenever the ends of justice would be served thereby, in accordance with the procedure for taking depositions set out in the Rules of Practice (43 CFR Part 221). The examiner may stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges, and the same parties or their predecessors in interest. The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted because of the absence of witnesses only in accordance with the Rules of Practice (43 CFR Part 221). In other cases continuances may be granted only when the ends of justice will be served thereby.

Continuances will not be granted unless it appears that they are clearly justified and that a timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the other parties. The other parties shall have five days to file an objection to the continuance if they so desire. The examiner will then rule on the request, and, if the request is granted, set a new date for the hearing.

(g) Conduct of hearing before examiner. The appellant, the range manager, and recognized interveners will stipulate as far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented and issues which clearly appear to be unnecessary to a proper disposition of the case will be excluded; Provided, That the party asserting such an issue may state briefly for the record the substance of the proof which otherwise would be offered in support of the issue. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties. The range manager, or his representative, will then state the grounds of the decision from which the appeal has been taken, together with such explanation as may be deemed necessary, and may call and examine witnesses on the issues involved. Upon the conclusion of this testimony the appellant shall present his case, following which recognized interveners may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy. All oral testimony shall be under oath, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. Objections to evidence will be ruled upon by the examiner and exceptions duly noted, and such exceptions will be considered upon an appeal from the decision of the examiner. In noting an exception to a ruling sustaining an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence. The examiner will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof.

(h) Witness fees. Under the subpoena issued a witness will be entitled to a witness fee of $1.50 per day for the time in attendance at the hearing and the time necessarily spent in travel from his residence to the place of hearing and return, plus five cents per mile for the distance necessarily traveled. Witnesses who attend hearings so far removed from their residences as to prohibit return thereto from day to day will be allowed a per diem of $3.00 for expenses of subsistence in addition to witness fees for each day of actual attendance and for each day necessarily occupied in traveling to and from hearings. A subpoena may be served only in the county in which the hearing is to be held, and a witness cannot be compelled to appear outside of such county. Claims for witness fees and mileage will be presented on Form No. 1-327, properly certified by an authorized certifying officer, and will be submitted in the usual way for payment.

(i) Findings of fact and decision by examiner; notice; submission to Director of the Bureau of Land Management. As promptly as possible following the termination of the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law and will render a decision upon all material issues of fact, law and discretion presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. In any case, he must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any appeal. A copy thereof shall be sent by registered mail to the appellant and all interveners: Provided, however, that the Director of the Bureau of Land Management may require, in specific cases, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by the Rules of Practice (43 CFR Part 221).

(j) Notice of appeal to the Director of the Bureau of Land Management; furnishing copies of the record. Within ten days after the receipt of the decision of the examiner any party desiring to appeal to the Director of the Bureau of Land Management shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the appellant and to the interveners, at a charge of five cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervener is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed in the office of the Director.

(k) Effect of decision suspended pending appeal. An appeal shall suspend the effect of the decision appealed from pending the decision on appeal. However (1) the officer making a decision, either initially or on appeal, may, in his discretion when the orderly administration of the range or other public interest requires, provide, in the decision or by order made before an appeal is taken therefrom, that the decision shall be in full force and effect pending the decision on appeal, and (2) the officer to whom an appeal is taken may, in his discretion when the orderly administration of the range or other public interest requires, by order provide that the decision appealed from shall be in full force and effect pending the decision on appeal. Any action taken by the range manager pursuant to a decision shall be subject to modification or revocation by the Director or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under sec. 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

(l) Appeals to the Director of the Bureau of Land Management. An appeal from the decision of the examiner to the Director of the Bureau of Land Management shall be filed, together with any brief desired in support thereof, within thirty days after date of receipt of the transcript of testimony, or, in the event the transcript of testimony is not requested, such appeal shall be filed within thirty days after receipt of the examiner's decision, in the office of the Director. A copy of the appeal and any brief in support thereof must be served on each party of record, either personally or by registered mail. Any party of record opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in said office a reply brief, if he so desires, a copy of which must be served upon the appellant in the same manner. Evidence of service of appeals and briefs must be furnished. The appeal in other respects shall be made in accordance with the Rules of Practice (43 CFR Part 221).

No adjudication of grazing privileges will be set aside on appeal if it appears that it is reasonable and that it represents a substantial compliance with the provisions of the Federal Range Code for Grazing Districts.

(m) Appeals to the Secretary of the Interior. An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with the Rules of Practice (43 CFR Part 221).

(n) Record as basis of decisions: definition of record. No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

The transcript of testimony and exhibits together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

161.10 General Rules of the Range.

(a) Acts Prohibited. The following acts are prohibited on the Federal range:

(1) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit; whether regular or free-use, or a crossing permit.

(2) Grazing livestock upon or driving livestock across the Federal range, including stock driveways, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(3) Allowing livestock to drift and to graze on Federal range, including stock driveways, without a license or permit, either regular or free-use.

(4) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(5) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(6) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law, Provided, That permits to carry on controlled burning of vegetative cover or brush may be issued by the Bureau of Land Management in proper cases, such permits to be subject to such conditions as the Bureau of Land Management may see fit to impose, and to all State laws and regulations concerning such burning.

(7) Maliciously molesting, or driving from the Federal range livestock lawfully grazing thereon under an appropriate license or permit.

(b) Rules of fair range practice. The following rules of fair range practice shall be complied with by all licensees and permittees, both regular and free-use:

(1) The provisions of statutory law of any State in which grazing districts are located with reference to the branding of livestock and sanitary requirements are hereby incorporated as a part of the Federal Range Code for Grazing Districts and all licensees and permittees shall comply with the provisions in effect in the State or States in which any part of the grazing district or districts in which their licenses or permits are to be effective are located.

(2) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats, and ten miles per day for cattle or horses, Provided, That an increased or decreased rate of travel may be prescribed in such permit if, in the discretion of the range manager, the circumstances in any given case so require.

(3) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, shall pay a proportionate share of the cost of managing livestock licensed or permitted within the range area in instances wherein associations for such management have been formed, and shall bed sheep and goats according to instructions issued by the Bureau of Land Management. Upon request by the majority of the users of any community allotment of Federal range, the Bureau of Land Management may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements by the Bureau of Land Management, the provisions of State law on the subject shall be regarded as applicable. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.11 Procedure for enforcement of rules and regulations.

(a) Service of notice. Whenever it appears that there has been any willful violation of any provision of the act or of the Federal Range Code for Grazing Districts, the range manager will cause the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management to be served with a written notice, which will set forth the act or acts constituting such violation and in which reference will be made to the provision or provisions of the act or the Federal Range Code for Grazing Districts alleged to have been violated. Such notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

(b) Unlawful grazing on Federal range; removal of livestock; impoundment. Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice of his lien with the Bureau of Land Management will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(c) Amicable settlement of civil cases involving damage to Government property. All offers of settlement for damage to Federal range or to other property of the United States resulting from an alleged violation of any provision of the act or of the Federal Range Code for Grazing Districts will be transmitted by the regional administrator, with his recommendation, to the Director of the Bureau of Land Management for consideration. An offer of settlement will not constitute satisfaction of civil liability for the damage involved until finally accepted by him, and in no event will it relieve the violator of criminal liability. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered and until payment of any amount due as grazing fees has been made.

(d) Disciplinary action for violations. The regional administrator is authorized to reduce or revoke a grazing license or permit or to deny renewal thereof for a clearly established violation of the terms or conditions of the license or permit or for a violation of any of the provisions of the Federal Range Code for Grazing Districts. Before any license or permit is reduced or revoked, or renewal thereof denied, because of such a violation, however, the regional administrator will cause the licensee or permittee to be served with a written notice which will set forth the act or acts constituting the violation and an estimate of the amount of damage resulting therefrom. Such notice also will refer to the terms or conditions of the license or permit or to the provision or provisions of the Federal Range Code for Grazing Districts alleged to have been violated. The notice will cite the licensee or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license or permit should not be reduced or revoked and satisfaction of damages made. The notice may be served in person or by registered mail and the affidavit of the person making personal service or the registry receipt shall be preserved.

The hearing before the examiner upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The licensee or permittee may appear in his own behalf or by counsel. The evidence shall be confined to the commission of the acts charged and the amount of damages, if any, due the United States. If upon the hearing of the order to show cause the violation with which the licensee or permittee is charged is established to the satisfaction of the examiner, he will render a decision finding the amount of damages and directing the regional administrator to reduce or revoke the license or the permit, if the facts so warrant.

Upon the failure of the person served in the notice to appear at the time and place designated in the notice, and in the absence of a good and sufficient showing to the examiner of a reason for his failure to appear, the examiner may direct the regional administrator to reduce or revoke the license or permit, as the violations charged in the notice and the amount of damages alleged may warrant.

Appeal from the decision of the examiner on any matter under this section shall be made in accordance with the provisions of paragraphs (j), (k), and (l) of section 161.9, and appeal to the Secretary of the Interior from the decision of the Director shall be made under paragraph (m) of section 161.9.

(e) Bonds for violations. Whenever a livestock operator commits a willful or wanton violation of any provision of these rules or has repeatedly committed violations, the regional administrator is authorized to require him to furnish a bond in an amount sufficient to cover all probably damage that may result from his violations during the ensuing year. The bond may be either a cash or a surety bond and will be in a form approved by the Director of the Bureau of Land Management. Upon the failure to furnish such bond when so required, the regional administrator is authorized to refuse to issue or renew a license or permit, or to revoke an existing license or permit. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.12 District Advisory Boards.

(a) Authorization for Establishment; Number of Members; Qualifications. Section 18 of the act provides that there shall be an advisory board of local stockmen in each grazing district. The regional administrator will fix the number of members to be elected to such board in each district, such number to be not less than five and not more than twelve, exclusive of a wildlife representative who will not be elective but will be appointed by the Secretary of the Interior. The regional administrator may fix the number of district advisers to be elected as representatives of each class of stockmen, according to the kind of livestock owned, or may fix the number to be elected from each voting precinct established by him, or both, provided that the free-use licensees or permittees in each district will be entitled to one representative, who shall be a free-use licensee or permittee. All district advisers shall be elected in the manner provided in this section and, excepting the wildlife representatives, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

(b) Elections; Time and Place of Holding; Notice. An election of district advisers for each grazing district will be held within ninety days after the publication in the Federal Register of the order establishing the district, and annually thereafter. The region administrator may divide the district into voting precincts and will designate a voting place within or near each district or precinct. The range manager will give notice of the time and place or places of holding an election in one or more newspapers of general circulation in the district, by posting in the office of the regional administrator and in the office of the range manager and by posting in such other public places as may be necessary to give the matter proper publicity. No election shall be held to be invalid by reason of failure to give any of the foregoing notices unless it shall be made to appear that there was a failure to give substantial notice.

(c) Elections; Qualifications of Electors. Only those persons who are qualified to receive regular or free-use licenses or permits will be allowed to vote in any election held pursuant to section 18 of the act, Provided, That in any new grazing district hereinafter established and embracing areas not heretofore within any district, the electors will be those stockmen who, prior to the establishment of the district, were regularly accustomed to using the Federal range within said district. A minor may vote if otherwise qualified, Provided, That upon request by his natural or legal guardian his ballot may be cast by the guardian in the name of the minor. The judges at any election will be furnished by the representative of the Bureau of Land Management in charge with a list of all electors entitled to vote in the district. No one whose name does not appear on such list shall be allowed to vote, Provided, That anyone claiming that his name has been erroneously omitted from the list may obtain and mark a ballot which will be held uncounted until the range manager shall have had a further opportunity to determine whether or not the party was entitled to vote. If it is found that the party was entitled to vote, his ballot shall be counted, otherwise it shall be disregarded.

(d) Elections; judges; nominations; ballots; registration; challenges. The representative of the Bureau of Land Management in charge of an election will choose three qualified electors to act as election judges. The electors present may then place in nomination the names of the candidates, Provided, That nominations for the representative of a given precinct must be made by one qualified to represent such precinct, but ballots may be cast for any other person qualified to represent a particular class or precinct. Voting shall be only by ballots cast personally by qualified electors and proxies will not be recognized. No elector shall receive a ballot until he has registered by signing opposite his name on the list of persons entitled to vote. Before receiving a ballot any elector may be challenged by any other elector qualified to vote in the district and thereupon the judges, or any of them, may require the elector challenged to answer such questions concerning his qualifications as a voter as may be deemed necessary. Upon his failure or refusal to answer such questions satisfactorily, he shall not be permitted to register or to receive a ballot. Each candidate may designate any qualified elector to remain within the polling places during the casting and counting of votes and the declaration of the results thereof, and such person may act as a challenger. Before any elector shall be permitted to deposit his completed ballot in the ballot box, the judges shall write "Voted" opposite his signature on the registration list.

(e) Elections; method of voting. Only one ballot may be cast by the holder or holders of any one license or permit, whether regular or free-use, or by a qualified elector or electors controlling any one base property. An elector eligible only for a free-use license or permit may cast a ballot for one free-use candidate only and for no other candidate. All other electors, regardless of the precincts in which they may reside or operate, shall cast one ballot each, on which shall be written the name or names of the total number of candidates to be elected in the district as representatives of the class of owners of livestock to which the elector belongs, Provided, That if he belongs to more than one such class he shall vote only for the candidates of the class in which he predominates in numbers of livestock, on the basis of one cow or horse being the equivalent of five sheep or goats. If a certain number are to be elected from each precinct, no ballot shall include the names of more candidates from any one precinct than are to be elected therefrom.

(f) Elections; close of polls; results; ties; judges' certificate. Polling places shall remain open on the day of the election from 2 p.m. to 5 p.m., or until those present at 5 p.m. shall have voted. Upon the closing of the polls the judges shall open the ballot box and count the votes. In case of a tie vote, a choice by lot shall be made by the judges in the presence of the tie candidates or of at least one representative designated by each such candidate for such purpose. As soon as the ballots have been counted, the judges shall make out a certificate of returns under their hands, stating the number of votes cast, the number of excess, unused or spoiled ballots, and, in both words and figures, the number of votes received by each candidate. The certificate, together with the ballots and the registration list of voters, shall be enclosed and sealed and forthwith delivered to the representative of the Bureau of Land Management in charge of the election.

(g) Appointment by Secretary of the Interior; Oath and Term of Office; Removal; Vacancies. No person elected as a district adviser may assume office until he has been appointed by the Secretary of the Interior and has taken an oath of office. Persons elected as district advisers at the first election after the establishment of a grazing district shall be divided as evenly as may be into three classes by lot by the range manager. Those in class 1 shall hold office for one year, those in class 2 for two years, and those in class 3 for three years, and until their successors are elected and have qualified. Thereafter at each election the class whose term has expired shall be elected for a term of three years. The Secretary of the Interior may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or for the good of the service. Upon a vacancy occurring in the office of a district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the regional administrator, shall be transmitted to the Director, who shall consider the recommendation and, if he concurs, transmit it to the Secretary for his consideration. A person appointed by the Secretary to fill a vacancy shall hold office until the next regular election, when a successor shall be elected to serve for the remainder of the unexpired term, if any, of the member causing the vacancy. Wildlife representatives shall hold office for a term of three years and until a successor is appointed by the Secretary.

(h) Meetings; Organization. District advisory boards shall meet at any time and place within or near the district designated by the regional administrator or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the representative of the Bureau of Land Management present, it may meet in executive session in considering applications for the granting of licenses or permits or any other business.

(i) Functions and duties of district advisers. District advisers shall advise or make recommendations on the following matters:

(1) The carrying capacity of the Federal range in the district.

(2) Applications under the Federal Range Code for Grazing Districts, for grazing licenses or permits, either regular or free-use, Provided, That no board shall make a recommendation on an application by any of its members. Such an application shall be acted on in the first instance by the range manager.

(3) Proper rules of fair range practice.

(4) Allotments of range by classes of livestock or for community or individual use.

(5) Seasonal use of the Federal range or any part thereof.

(6) Applications for the construction or maintenance of improvements on the Federal range under section 4 of the act.

(7) Any recommendations made by local associations of stockmen in the district.

(8) Reservations of carrying capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(9) Special rules for the district, within the meaning of 161.15.

(10) Any other matter which they may desire to bring to the attention of the Secretary of the Interior, or on which he may request their advice. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)(July 14, 1939, 53 Stat. 1002; 43 U.S.C. 315o-1)

(j) State Advisory Boards. Each grazing district advisory board shall select from its members, at the first meeting of the board after an election, two members and two alternates to serve on a State Advisory Board for the State in which the district is located, Provided, That where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected.

(k) National Advisory Board Council. Each State Advisory Board shall select from its members, at its first meeting after its membership is designated or changed, one representative and one alternate representing cattle and horses, and one representative and one alternate representing sheep and goats, to serve on a National Advisory Board Council.

(l) Functions and duties of State Advisory Boards and National Advisory Board Council. In addition to the service rendered on grazing district advisory boards, the State Advisory Board members shall consider and make recommendations on grazing administration policies or problems affecting the State as a whole. The National Advisory Board councilmen, in addition to serving on their respective district and State Advisory Boards, shall consider and make recommendations on grazing administration policies and problems of national scope (48 Stat. 1269; 49 Stat. 1976, 43 U.S.C. 315 et seq.).

161.13 Local associations of stockmen.

(a) Organization. Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

(b) Articles of incorporation; constitutions; by-laws. Such associations shall be organized as corporations "not-for-profit," if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the Director of the Bureau of Land Management before the organization of the association shall be recognized by the Department of the Interior. The by-laws of such associations need not be submitted but in any instance in which they are in conflict with the provisions of the Federal Range Code for Grazing Districts or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

(c) Powers. Such local associations should be authorized to exercise the following powers:

(1) To lease, or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

(2) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(3) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district, under permit issued by authority of the Secretary of the Interior.

(4) To act in an advisory capacity to the Secretary of the Interior in the administration of the Federal range lying within the district. All recommendations made by the association to the Secretary shall be subject to the provisions of the Federal Range Code for Grazing Districts and shall include the right of a hearing before an examiner of the Bureau of Land Management on the necessity and propriety of any action recommended and of appeal to the Secretary from the examiner's findings of fact and decision.

(5) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes contemplated by the act.

(6) To enter into cooperative agreement with the Secretary of the Interior or any officer designated by him for any of the foregoing purposes or for any other purpose authorized by the act.

(d) Cooperative agreements for use of lands; obligation of all licensees and permittees to share cost. Whenever the carrying capacity of Federal range is increased by reason of the acquisition of control of any lands by the Bureau of Land Management through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands, based on the number of livestock by which his license or permit is increased by reason of the administration of the association lands by the Bureau of Land Management, plus any authorized association assessments for other expenses. The range manager is authorized to refuse to issue a license or permit to any applicant or to cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such an agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges. (Sec. 9, 48 Stat. 1273; 43 U.S.C. 315h)

161.14 Construction and maintenance of improvements on the Federal Range.

(a) Statutory authorization. Section 4 of the act provides:

> "Fences, wells, reservoirs, and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve. Permittees shall be required by the Secretary of the Interior to comply with the provisions of law of the State within which the grazing district is located with respect to the cost and maintenance of partition fences. No permit shall be issued which shall entitle the permittee to the use of such improvements constructed and owned by a prior occupant until the applicant has paid to such prior occupant the reasonable value of such improvements to be determined under rules and regulations of the Secretary of the Interior. The decision of the Secretary in such cases is to be final and conclusive."

(b) Applicants for permits and cooperative agreements; qualifications. An applicant for a permit or for a cooperative agreement or an arrangement to construct and maintain improvements of the character described in section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must satisfy the qualifications defined in 161.3(a).

(c) Applications; form and contents; filing. Applications for such permits, cooperative agreements, or arrangements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. If an application concerns the use and maintenance of improvements constructed and owned by a prior occupant under permit issued by the authority of the Secretary, it shall include also an itemized showing of their reasonable value at the time of filing the application and other evidence that the applicant has paid this amount to the prior occupant and has obtained title to the improvements free of all encumbrances, or a clear and concise explanation of the reasons for a lack of such agreement between the applicant and the prior occupant. When necessary properly to explain the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing their location in the grazing district. All applications shall be made on forms provided by the Bureau of Land Management, with such modifications as may be necessary, and shall be filed in triplicate with the range manager, who will submit them to the advisory board for consideration and recommendation prior to transmittal to the regional administrator for action.

(d) Applications for construction of improvements; consideration; appeals. The regional administrator, following the receipt of an application concerning the construction of an improvement, together with the recommendation of the advisory board and range manager, will act on the application and such action shall be final unless the applicant appeals to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and Secretary of the Interior shall be made in accordance with section 161.9(c) and sections 161.9(e) through 161.9(n). Decisions not appealed from, and, in any event, the decision of the Secretary shall be final.

(e) Applications for use of improvements owned by prior occupant; procedure upon failure to agree. An application to use and maintain improvements constructed and owned by a prior occupant, under permit issued by the authority of the Secretary, if accompanied by the by the evidence of ownership provided for in paragraph (c) of this section, shall be considered in the same manner as an application for the construction of improvements. Upon the filing of such an application showing that the applicant and the prior occupant have not agreed on the value of the improvements, the regional administrator will immediately, at the applicant's expense, cause the prior occupant to be served either personally or by registered mail with a notice of the filing of the application, together with copies of the application and any accompanying papers and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or, if the prior occupant applies within thirty days from the date of service for a hearing, in the light of such evidence as the applicant and the prior occupant may desire to present in such hearing, the regional administrator will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken to an examiner. Appeals to an examiner and to the Director of the Bureau of Land Management and to the Secretary of the Interior shall be made in accordance with section 161.9(c) and (e) through (n). Decisions not appealed from and, in any event, the decision of the Secretary shall be final. Upon the failure of the prior occupant to show cause or to apply within thirty days for a hearing, the reasonable value of the improvements will be determined by the regional administrator: Provided, That in the event of such default by the prior occupant the value determined shall not be less than the amount alleged by the applicant in his application and the decision of the regional administrator in such cases shall be final. In any case when a decision has become final, payment by the applicant to the prior occupant of the amount determined and a showing that the improvements are free of all encumbrances shall be a condition precedent to favorable action on the application.

(f) Approval of application. Upon the approval of an application concerning the construction or use and maintenance of any improvements on the Federal range by the issuance of a permit or the approval of a cooperative agreement or other arrangement, the applicant may construct the improvements or use the improvements constructed and owned by the prior occupant, as the case may be. (Sec. 4, 48 Stat. 1271; 43 U.S.C. 315c)

161.15 Special rules for grazing districts. Whenever it appears to a regional administrator that local conditions in any district in his region make necessary the application of a special rule on any of the matters in the Federal Range Code for Grazing Districts in order better to achieve an administration consistent with the pruposes of the act, he may recommend such a rule, supported by a factual showing of its necessity, to the Secretary of the Interior for approval. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.16 Penal provision. Under section 2 of the act any willful violation of the provisions of the act or of the rules and regulations thereunder (the Federal Range Code for Grazing Districts), after actual notice of the existence of the provisions of such act or such rules and regulations, is punishable by a fine of not more than $500. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

161.17 Saving clause. So far as practicable, and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in 161.1(a) of the Federal Range Code for Grazing Districts, the provisions of 161.6(b) of the Code will not be applied to the prejudice of the position of anyone who on September 23, 1942, was the holder of a grazing license or permit or who on that date had pending an application therefor. (Sec. 2, 48 Stat. 1270; 43 U.S.C. 315a)

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1741]

PART 80—TOWN SITES

METHOD OF SALE

The following text is added to Part 80:

§ 80.28 *Method of sale.* Sales of railroad town sites in Alaska, provided for by Executive Order No. 3489 of June 10, 1921 (43 CFR 297.3), will be made by the regional administrator in Alaska, as superintendent of sales of railroad town sites in accordance with town-site regulations contained in 43 CFR 255.1–255.9 so far as those regulations are applicable.

(Sec. 1, 38 Stat. 305, 48 U. S. C. 303; E. O. 3489, June 10, 1921)

NOTE: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

ROSCOE E. BELL,
Associate Director.

Approved: October 25, 1949.

J. A. KRUG,
Secretary of the Interior.

[F. R. Doc. 49-8733; Filed, Oct. 31, 1949; 8:50 a. m.]

Published in Federal Register, Volume 14, Number 211, of November 1, 1949

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter T—Sale, Lease or Use, and Acquisitions

[Circular 1742]

PART 255—TOWN SITES

MISCELLANEOUS AMENDMENTS

1. The following text is substituted for §§ 255.1 to 255.25:

TOWN SITES RESERVED BY THE PRESIDENT OR BY PUBLIC LAND ORDER

§ 255.1 *Reservation of public lands for town site purposes.* Public lands have been reserved by the President for town site purposes, from time to time, under section 2380 of the Revised Statutes (43 U. S. C. 711). Reservations for such purposes may now be made by public land order, by the Secretary of the Interior, pursuant to Executive Order No. 9337 of April 24, 1943. The reservations may be made by the Secretary of the Interior on his own motion, or petitions may be addressed to him requesting the reservations. Such petitions should be filed with the regional administrator for the region in which the lands are situated.

§ 255.2 *Survey of reserved land into blocks and lots; appraisal thereof.* Town sites reserved under section 2380 Revised Statutes, or under any other law directing their disposition under section 2381, Revised Statutes (43 U. S. C. 712) will be surveyed, when ordered by the regional administrator, with the approval of the Bureau of Land Management, into urban, or urban and suburban, lots and blocks, and thereafter the lots and blocks will be appraised by such disinterested person or persons as may be appointed by the regional administrator. They will examine each lot to be appraised and determine the fair and just cash value thereof. Improvements on such lots, if any, must not be considered in fixing such value. Lots or blocks reserved for public purposes will not be appraised.

§ 255.3 *Schedule of appraisement; disposal of copies thereof.* The schedule of appraisement must be prepared in triplicate on forms furnished by the regional administrator, and the certificates at the end thereof must be signed by each appraiser, and on being so completed they must be immediately transmitted to said officer; and when approved by him, one copy will be sent to the district land office, and one copy to the Bureau of Land Management. He will retain the triplicate copy.

§ 255.4 *Time, place, and terms of sale.* A notice of sale will be issued in each case by the regional administrator prescribing the time when, the place where, and the terms under which the lots will be offered.

§ 255.5 *Publication in Federal Register; sale to be given other publicity.* Every notice of sale shall be published in the FEDERAL REGISTER and every sale shall be given such other publicity, without cost to the Government, as may be deemed proper by the regional administrator.

§ 255.6 *Lot purchase limitation authorized; manner of making bids.* In appropriate cases the regional administrator may limit the number of lots each person may buy. Bids and payments may be made through agents, but not by mail, or at any time or place other than that fixed in the notice of sale.

§ 255.7 *Penalty for combinations in restraint of the sale.* All persons are warned against forming any combination or agreement which will prevent any lot from selling advantageously, or which will in any way hinder or prevent the sale, and all persons so offending will be prosecuted under 18 U. S. C. 1860.

§ 255.8 *Cash and memorandum certificates.* All lots purchased at the same time, for cash, in the same town site, and by the same person should be included in one certificate, in order to prevent unnecessary multiplicity of patents.

Where cash certificates cannot immediately issue, because payment for the lots has not been made in full, and where the notice of sale authorizes the issuance of nontransferable memorandum certificates on the payment of the first installment of the purchase price, more than one lot should not be included in the same certificate.

§ 255.9 *Reoffering at public sale; private entry.* An offering at public sale may be adjourned or closed, in the discretion of the regional administrator or other officer conducting the sale. If adjourned, the unsold lots will be held for future disposition at public sale. If closed, the unsold lots will become subject to private entry at the appraised price.

Lots sold at public sale and forfeited because of nonpayment of the purchase price, or for any other reason, will be held for further offering at public sale, unless reentry of the lots at private sale, at a designated price, is authorized by the notice under which the lots are sold.

Lots sold at private sale should be accompanied by an application therefor, signed by the applicant.

(R. S. 2380, 2381, 43 U. S. C. 711, 712)

TOWN SITES PLATTED BY OR FOR OCCUPANTS

§ 255.10 *Town site settlement.* Sections 2382 to 2386, of the Revised Statutes (43 U. S. C. 713–717), authorize the platting of town sites by or for the occupants and the disposal of such town sites, where town site settlement has been or may be made upon unreserved public lands subject to such settlement. Public lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, or 6964 of February 5, 1935, are not subject to occupation for town site purposes unless first classified for such occupation, pursuant to Part 296 of this chapter.

§ 255.11 *Filing with county recorder of plat, field notes, and statement of improvements.*[1] The occupants, at their own expense, must cause a survey of the land into lots, blocks, streets, and alleys to be made, and the plat and field notes thereof to be filed with the recorder of the county in which the land is situated. The plat must show (a) that the land does not include an area in excess of 640 acres, unless the lots, buildings, and improvements cover a greater area, and then only to the extent so occupied and improved; (b) that the boundaries of the land are correctly shown and described thereon according to the lines of the public surveys, or if not so surveyed, then that the exterior lines of the town-site survey are tied to a designated, permanent, and thoroughly identified monument; (c) that the streets, squares, blocks, lots, and alleys, the dimensions of the same, with measurements, courses, and area of each municipal subdivision, and the name of the town, are correctly delineated thereon; and (d) the exterior lines of all existing railroad rights-of-way and statement grounds.

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[1] Title 18, U. S. C., sec. 1001, makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Published in Federal Register, Volume 14, Number 211, of November 1, 1949

The lots should not exceed 4 200 square feet, except in cases where the configuration necessitates a different area. The above-required facts should be embodied in the statement of the surveyor entered upon the margin of the plat.

A statement of the extent and general character of the improvements on the land must be filed with the plat and field notes, and over the signature of the party acting for and on behalf of the occupants of the land.

§ 255.12 *Filing in district land office in duplicate, of transcript of plat, field notes, and statement.* Within one month after filing such plat, field notes, and statement, a transcript thereof in duplicate, each duly verified by the certificate of the county recorder, and accompanied by the statement of two persons that such town has been established in good faith, and showing the number of inhabitants thereof, and when it was so established, shall be filed with the manager of the land district in which the town site is located, who will immediately transmit the same to the Bureau of Land Management for consideration and upon the approval thereof one of said duplicate plats and statements will be returned to the manager for his files.

§ 255.13 *Notice to be issued by regional administrator; preemption proofs; public sale of unclaimed lots.* After the town site plat has been approved by the Bureau of Land Management, and a copy filed in the district land office, the regional administrator will issue a note to be published in the Federal Register stating the conditions under which preemption proofs may be submitted by the lot claimants and the time, place, and conditions for the offering of the unclaimed lots at public sale. This notice should be given such other publicity without cost to the Government as the regional administrator may deem appropriate.

§ 255.14 *Adjustment of town-site survey to township survey.* When the town site is upon land over which the township surveys have not been extended, the regional cadastral engineer will be notified and thereafter, when the township surveys have been extended over the land, the exterior lines of the town site may be adjusted thereto where it can be done without impairing vested rights.

§ 255.15 *Survey by Department of the Interior; increase in price of lots.* Refusal or failure to file such transcript, plat, field notes, and statement, with the testimony, as required, within 12 months from the establishment of a town on the public domain, will authorize the Bureau of Land Management to cause a survey and plat to be made thereof, the lots in which shall be disposed of at an increase of 50 per centum on the minimum price.

§ 255.16 *Minimum price of lots.* The minimum price for all lots of 4,200 square feet or less is $10 per lot, except in cases where the survey into lots and blocks is made by the Government, in which case the minimum price is $15 per lot for such lots. The minimum price for all lots in excess of 4,200 square feet will be computed by adding to said minimum price of $10 or $15, as the case may be, the sum of $4 for each additional 1,000 square feet or fractional part thereof in excess of 4,200 square feet unless the regional administrator shall fix a different rate.

§ 255.17 *Preemption claims, publishing and posting of proof notices.* A preemption right of purchase at the minimum price, at any time before the day fixed for the public sale, of not exceeding two lots, is accorded an actual resident, to secure which he must file in the district office his application therefor, and therein state the date of settlement, the value and character of his improvements thereon, that he is 21 years of age or over or the head of a family, and that he is a citizen of the United States or has declared his intention to become such. The notice of intention to make proof must be filed by the applicant and the notice for publication must be issued, and posted by the manager, and published at the expense of the applicant once a week for 5 consecutive weeks, in accordance with § 106.18 of this chapter.

Where a husband and wife are joint settlers, and the husband purchases two lots, as stated, the wife may also purchase an "additional lot" upon which she has placed substantial improvements.

§ 255.18 *Preemption proof.* Preemption proof may be made before the manager, or any officer duly authorized by law, and must show (a) due publication of the manager's notice, (b) the claimant's age, (c) his citizenship, in the manner required by Part 137 of this chapter, and (d) his actual residence upon one lot and substantial improvements on the second lot, if two lots be included in the application. The proof must embrace the testimony of the applicant and of at least two of his advertised witnesses. The purchase price for the lot or lots must be paid when the proof is made. Entry of public lands under other laws, or in other town sites, or ownership of more than 320 acres, will not disqualify an applicant from making such entry No entry can be made of an improved lot on which the claimant does not reside unless his residence lot is included in the same or a previous entry.

§ 255.19 *Hearings.* . Hearings will be ordered and conducted in accordance with the rules of practice, Part 221 of this chapter, where two or more adverse applications are filed for the same lot, or where a sufficient contest affidavit is filed against an application, on or before the day fixed for making proof, but no purchase money will be collected from the applicants until the final determination of the case, whereupon the successful applicant will be required to pay the purchase price within 30 days from notice thereof.-

§ 255.20 *Conflicting mineral claims.* Mineral surveys, locations, applications, and entries covering lots in such town sites will not prevent the entry of such lots hereunder and the issuance of patent thereon, but such mineral claims, if held under prior and valid mineral rights, are amply protected by the law from prejudice by the allowance of such town-lot entries and patents, and paramount patents may be issued thereafter to such mineral claimants.

§ 255.21 *Lots wholly or partly covered by mineral patents.* Lots wholly covered by outstanding mineral patents are not subject to entry under the town site law, and applications therefor will be rejected. Lots partly covered by mineral patents may be entered at the price fixed for the whole lot, but the certificate and receipt must contain at the end of the description an exception clause as follows: Excepting and excluding the portion of said lot (or lots) embraced in mineral patent (or patents) heretofore issued.

§ 255.22 *Forfeiture of preemption right.* All right to preempt and purchase occupied and improved lots for which no entry has been allowed prior to or on the date fixed for the public sale will be forfeited unless a contest be pending thereon, and such lots will be offered for sale together with the unoccupied lots. When notified of the date fixed for the public sale, the manager will refuse to receive or consider any such application for entry where due publication could not be had and proof made thereon prior to the date so fixed for the public sale.

§ 255.23 *Conduct of sale; minimum sale price; private entry.* The public sale will be conducted in the form and manner provided for the sale of town lots under §§ 255.4 to 255.9. No lot shall be sold for less than the minimum price fixed therefor, and such lots as may not be disposed of at public sale shall thereafter be liable to further public sale or to private entry at such minimum, or at such reasonable increase or diminution as the regional administrator may order after at least 3 months' notice thereof, to be published in the Federal Register.

(R. S. 453, 2478, 43 U. S. C. 2, 1201)

2. Section 255.41 is amended to read as follows:

TOWN SITES ENTERED BY TRUSTEES

§ 255.41 *Entry and payment.* When town site proof has been submitted, the manager will, if he approves the same, forward it to the regional administrator with his recommendation thereon, without collecting the purchase money and without issuing the final papers. If the proof so submitted is found satisfactory, the manager will be notified thereof, and if no objections exist in his office, he will notify the applicant thereof, and on payment of the minimum price fixed by the law for the purchase of the land he will issue the final papers.

(R. S. 453, 2478, 43 U. S. C. 2, 1201)

3. Section 255.46 is deleted and §§ 255.42 to 255.45, and 255.47 are amended to read as follows:

TOWN SITES IN RECLAMATION PROJECTS

§ 255.42 *Withdrawal and survey of land.* The Commissioner of Reclamation, with the concurrence of the Bureau of Land Management, may withdraw and reserve such lands for town site purposes, under the acts of April 16 and June 27, 1906 (34 Stat. 116, 519; 43 U. S. C. 434, 448, 561–563, 568, 594), as they may deem advisable. The Commissioner of Reclamation shall, when in his judgment the public interests require it, from time to time, cause not less than a legal subdivision, according to the official township surveys, of the lands so reserved to be surveyed into town lots, with appropriate reservations for public purposes. The plats and field notes of such surveys shall be prepared in triplicate for each town site, and shall be submitted for the approval of the Director, Bureau of Land Management.

§ 255.43 *Procedure governing appraisement and sale.* The Commissioner of Reclamation shall from time to time, with the concurrence of the appropriate regional administrator of the Bureau of Land Management, authorize the appraisement and sale of lots in reclamation town sites. Notices of sale will be issued and other actions taken by those officers in accordance with the town site regulations contained in §§ 255.1 to 255.9.

§ 255.44 *Installment payments.* Under authority of section 2 of the act of June 11, 1910 (36 Stat. 466; 43 U. S. C. 565), the order for sale may authorize the payment of the purchase price of lots, sold in town sites created under the laws in said act mentioned, to be made in annual installments.

§ 255.45 *Reappraisement and sale of unsold lots.* The Commissioner of Reclamation, with the concurrence of the appropriate regional administrator, may direct that unsold lots shall be reappraised under the first section of the said act of June 11, 1910 (36 Stat. 465; 43 U. S. C. 564). The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value.

§ 255.47 *Public reserves; patents therefor.* The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances, the municipality shall apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required in § 255.49.

(Sec. 2, 34 Stat. 116, 43 U. S. C. 562)

NOTE: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

ROSCOE E. BELL,
Associate Director.

Approved: October 25, 1949.

J. A. KRUG,
Secretary of the Interior.

[F. R. Doc. 49-8732; Filed, Oct. 31, 1949; 8:49 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter O—Payments and Repayments

[Circular 1743]

PART 216—PAYMENTS

Subchapter P—Practice

PART 220—GENERAL REGULATIONS RELATING TO PRACTICE

1. Section 216.29 *Applications not accompanied by proper remittances* is revoked.

2. Section 220.16 *Serial number assigned for purpose of identification only* is revoked.

(R. S. 453, 2478; 43 U. S. C. 2, 1201)

MARION CLAWSON,
Director.

Approved: October 26, 1949.

MASTIN G. WHITE,
Acting Assistant Secretary of the Interior.

[F. R. Doc. 49-8731; Filed, Oct. 31, 1949; 8:46 a. m.]

Published in Federal Register, Volume 14, Number 211, of November 1, 1949

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1744]

PART 63—GRAZING[1]

ESTABLISHMENT OF DISTRICTS AND ISSUANCE OF LEASES

Sec.
63.1 Statutory authority.
63.2 Policy.
63.3 Definitions.
63.4 Area subject to lease.
63.5 Lands not subject to lease.
63.6 Qualifications of applicants.
63.7 No right acquired by applicant prior to lease.
63.8 Classes of applicants; preference rights.
63.9 Application for lease.
63.10 Filing of application; copies necessary.
63.11 Annual rental.
63.12 Free grazing; reduction in grazing fee; no annual rental charged for lease, to native or half-breed.
63.13 Protests.
63.14 Transmittal of proposed lease and issuance of lease.
63.15 Recording of leases; posting notices.
63.16 Assignments and sub-leases.
63.17 Renewals of leases.
63.18 Driveways; quarantine regulations.
63.19 Crossing privileges and permits therefor.
63.20 Rights reserved; public land laws applicable.
63.21 Termination of lease; cancellation.
63.22 Liens; removal of improvements, fixtures and personal property.
63.23 Appeals.

AUTHORITY: §§ 63.1 to 63.23, issued under sec. 15, 44 Stat. 1455; 48 U. S. C. 471n.

ESTABLISHMENT OF GRAZING DISTRICTS AND ISSUANCE OF GRAZING LEASES

§ 63.1 *Statutory authority.*[2] The act of March 4, 1927 (44 Stat. 1452; 48 U. S. C. 471, 471a–471o) authorizes the Secretary of the Interior to establish grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease such lands for the grazing of livestock thereon. Section 7 of the act provides that all leases shall be made for a term of 20 years, except where the Secretary of the Interior determines that the land may be required for other than grazing purposes within the period of ten years; or where the applicant desires a shorter term, and in such cases leases may be made for a shorter period.

§ 63.2 *Policy.* The beneficial utilization of the public land in Alaska for the purpose of livestock grazing shall be conducted in such manner as may be considered necessary and consistent with the purposes of the act but shall be subordinated to the development of their mineral resources, to the protection, development and utilization of their forests, their water resources, their use for agriculture, and such other resources as may be of greater benefit to the public.

§ 63.3 *Definitions.* As used herein, "Secretary" means Secretary of the Interior; "Director" means Director, Bureau of Land Management; "Regional Administrator" means Regional Administrator, Bureau of Land Management, Anchorage, Alaska; and "Manager" means Manager, District Land Office, Bureau of Land Management, in whose district the lands involved are situated; "the act" means the act of March 4, 1927 (44 Stat. 1452, 48 U. S. C. secs. 471, 471a–471o).

§ 63.4 *Area subject to lease.* Pursuant to the act, three districts for the grazing of livestock were established on June 30, 1928, and the boundaries thereof were declared to be temporarily coincident with the boundaries of the three public land districts in Alaska. The Secretary of the Interior may add to such grazing district any public lands which, in his opinion, should be made a part of the district or, subject to valid existing rights of any lessee, may exclude from such district any lands which he determines are no longer valuable for grazing purposes or are more valuable for other purposes. Grazing leases will be granted only for such areas in a grazing district as may be deemed adequate and usable according to the needs of the lessee.

§ 63.5 *Lands subject to lease.* Vacant, unreserved and unappropriated public lands in a grazing district are subject to lease, provided they are not embraced in natural grazing grounds or routes of migration of wild animals, such as caribou or moose. Public lands within the boundaries of a grazing district which have been withdrawn for any purpose, are subject to lease if the Department or agency having jurisdiction thereof consents to the issuance of the grazing lease, provided the lands are outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Department of Agriculture, and outside of national parks and monuments.

§ 63.6 *Qualifications of applicants.* Any person who is the head of a family, or who has arrived at the age of 21 years, and is a citizen of the United States or a lawful resident of the Territory of Alaska, or any group or association composed of such persons, or any corporation organized under the laws of the United States or of any State or Territory thereof authorized to conduct business in Alaska, may file an application for a grazing lease.

§ 63.7 *No right acquired by applicant prior to lease.* The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public-land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for, pending the execution of a lease.

§ 63.8 *Classes of applicants; preference rights.* So far as is consistent with the administration of the grazing districts, applicants for grazing leases shall be given preference in the following order:

(a) Natives.

(b) Persons occupying the range on March 4, 1927, and

(c) Settlers over all applicants other than (a) and (b).

Any person claiming a preference right to a lease must furnish a statement, duly corroborated, setting forth the facts on which such claim is made.

§ 63.9 *Application for lease.*[3] An application for lease should be filed in the proper district land office. No specific form of application is required, but an application should contain or be accompanied by the following:

(a) Applicant's full name, post office address, the general nature of his business and the principal place of business.

(b) The age and a statement as to the citizenship status of the applicant, if an individual, or as to each partner or member of a partnership or association. Every applicant must be a lawful resident of Alaska, or a citizen of the United States, or one who has declared his intention to become such citizen. A copartnership or an association applicant shall file a certified copy of whatever written articles of association its members have executed. A corporation shall file a certified copy of its articles of incorporation, evidence that it is author-

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[1] The reporting requirement of these regulations has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[2] In view of the provisions of section 14 of the act of September 1, 1937 (50 Stat. 902; 48 U. S. C. 250m), which authorizes the Secretary of the Interior to regulate the grazing of reindeer upon the public lands in Alaska, reindeer leases are no longer issued under the act of March 4, 1927 (44 Stat. 1452; 48 U. S. C. 471, et seq.) See 25 CFR, Part 2—Reindeer in Alaska.

[3] Title 18, U. S. C., sec. 1001, makes it a crime for any person knowingly and willfully to make any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

Published in Federal Register of November 24, 1949,
page 7130, Volume 14, No. 227

ized to transact business in the Territory of Alaska, and a copy of the corporation minutes or resolution authorizing the filing of the application and the execution of the lease.

(c) Description of the land for which the lease is desired, by legal subdivision, section, township and range, if surveyed, and by metes and bounds, with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public-land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments.

(d) The names and post office addresses of two references as to the applicant's reputation and business standing.

(e) Description by legal subdivision, section, township and range, if surveyed, or by metes and bounds, with approximate area, if unsurveyed, of lands owned or controlled by the applicant which adjoin any of the tracts in the application.

(f) A statement as to the kind and number of animals or livestock proposed to be grazed on the land each year, and the period for which the grazing lease is desired.

(g) A statement as to whether the land is occupied, claimed, or used by natives of Alaska or others, and, if so, the nature of the use and occupancy and the improvements thereon, if any. Also the names and addresses of all owners of the improvements and whether such owner or owners claim the right of occupancy under any of the public-land laws, if known or obtainable.

(h) A statement that the applicant is acting solely on his own account and not under an agreement or understanding with any other for joint operation.

(i) The serial numbers of all other applications filed or leases obtained under the act of March 4, 1927 by the applicant, or applicant's spouse or business associate, or in which the applicant has a direct or indirect interest.

(j) A statement as to the buildings and improvements which the applicant proposes to place on the land including their estimated cost and a description of the tracts desired for their site.

(k) The number of acres of privately owned lands that are used by the applicant for cultivation to crops and the number of acres of such lands that are used for grazing purposes, and the manner in which the applicant plans to graze the lands applied for in connection with his general operations.

(l) A statement as to the previous use by the applicant of the lands covered by the application, the number of years the lands were so used, the class of livestock and the number of livestock and the period of use such livestock grazed on the lands each year.

(m) A showing as to hot or medicinal springs required by 43 CFR 292.8.

§ 63.10 *Filing of application; copies necessary.* An application for a lease should be filed in duplicate in the district land office for the district in which the lands applied for are situated, except when it embraces lands within the jurisdiction of more than one district land office, in which event it must be furnished in triplicate and may be filed in either office.

§ 63.11 *Annual rental.* Unless otherwise provided, each lessee shall pay to the proper district land office such rental per head or per acre as may be determined to be a fair charge for the grazing of livestock on the leased land, the compensation to be fixed with due regard to the general economic value of the grazing lease. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for grazing animals under one year of age, provided they are the natural increase of the stock upon which rental fees are paid.

§ 63.12 *Free grazing; reduction in grazing fee; no annual rental charged for lease to native or half-breed.* Any person, including prospectors and miners, may graze free of charge not more than 10 animals upon any land included within any grazing district upon applying to the Regional Administrator in person or by letter, stating the number and kind of stock to be thus grazed, the lands upon which the grazing will take place, and the approximate time such grazing will be continued. Any Eskimo or other native or half-breed, or association thereof, may apply for a grazing allotment on unallotted public lands, and a lease shall be issued to him or them as to other persons, except that no annual rental will be charged for such lease. Such applicant must show by a corroborated statement that the applicant is an Eskimo or other native or half-breed, or an association thereof, and entitled to such lease without charge. When an Eskimo, native, or half-breed through cooperative agreement, grazes his livestock without payment of annual rental on an allotment held by other lessees, any grazing fee charged for such land on the basis of acreage will be reduced in proportion to the relative number of such native-owned livestock, as compared to the total number on said allotment.

§ 63.13 *Protests.* Protests against an application for a lease, or an allotment, should be in duplicate, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should be accompanied by an application for a grazing lease.

§ 63.14 *Transmittal of proposed lease and issuance of lease.* If the application is complete and in conformity with the law and regulations and it is determined by the Regional Administrator that a proposed lease should be transmitted, the Manager will prepare a lease, with necessary copies, on Form 4–470, and send such lease to the applicant. The proposed lease must be duly executed by the applicant in duplicate or triplicate or as may be proper, and returned promptly to the district land office with such advance rental payments as may be required. When all requirements have been met and final action has been taken on any protests which may have been filed, the Manager will execute and issue the lease and will forward a copy thereof to the applicant.

§ 63.15 *Recording of lease; posting notices.* Immediately upon receipt of a copy of the executed lease, the lessee shall cause the same to be recorded with the recording officer for the judicial district within which the leased land is situated. Thereafter, the lessee shall return the recorded lease to the proper district land office, which shall make due notation and report of recordation and return the lease to the lessee.

The lessee shall, within one year after the date of issuance of the lease, mark the boundaries of the leased land by posting notices every one-half mile and in a conspicuous place at each boat landing in the leased area if the lease is for one or more islands, which notices should contain a description of the land, the name and address of the lessee and a statement that it is occupied for grazing purposes under grazing lease identified by serial number, date and tenure.

§ 63.16 *Assignments and subleases.* Proposed assignments of a lease, in whole or in part, or subleases, must be filed in triplicate with the district land office within 90 days from the date of its execution, for transmittal to the Regional Administrator. Such assignments or subleases must contain all of the terms and conditions agreed upon by the parties thereto, must be accompanied by the same showing by the assignee or sublessee as is required by applicants for a lease; and must be supported by a showing that the assignee or sublessee agrees to be bound by the provisions of the lease. No assignment or sublease will be recognized unless and until approved by the Manager.

§ 63.17 *Renewals of leases.* Applications for renewal of grazing leases should be filed within the ninety days preceding the expiration of the period for which a lease is granted. If the Regional Administrator shall determine that a renewal lease should be granted, the lessee will be offered such a lease by the Manager upon such terms and conditions and for such duration as may be fixed by the Regional Administrator.

§ 63.18 *Driveways; quarantine regulations.* When it appears necessary for stock to regularly cross any portion of an established grazing district, and undue injury to other interests will not result, suitable driveways may be established. Such driveways will be as short and as easy of passage and access as the character of the country and the protection of the other interests will permit. They will be established with care for the interests of lessees using adjoining ranges. Where driveways are reserved along well-defined routes which must be traveled, all grazing on these areas will be prohibited except by stock in transit, unless the applicant can make available an alternate comparable route of no greater difficulty for stock driveway use across any other lands under his control, in which event a short term lease may be allowed for lands in reserved driveways, but all such leases will contain a special stipulation whereby the lessee will permit the public to use the reserved lands included in the lease for the purpose for which it was reserved. Persons driving or transporting stock from one point to another must comply with the quarantine regulations prescribed by the Territorial or other proper authorities, and unless they do so the privilege may be denied them. The condition of the stock as to contagious or infectious diseases will be determined by the proper Federal or Territorial authorities.

§ 63.19 *Crossing privileges and permits therefor.* Crossing permits will ordinarily not be required when the period for crossing is short, when the stock will be driven along a public highway and will not be grazed upon the leased land, or when such crossing will not interfere with the grazing district administration or other related interests.

(a) Free crossing permits will be issued by the Regional Administrator when good grazing administration or the protection of other related interests do not make the issuance of such permits objectionable. The application must show the number of stock to be driven, the date of starting, the approximate period required for crossing, and the lands to be traversed. Applicants for crossing privileges must file their applications with the Regional Administrator, or such other person as he may designate to supervise livestock management in the area involved. It must be filed sufficiently in advance of the date when such privilege is to begin so as to enable the proper officer to handle the details of the crossing and to give such sufficient notice of the proposed crossing privilege to the lessee thereof as will enable him to remove his animals from the line of crossing, if he so desires.

(b) Applications for crossing permits may be made either in person or by letter, and permits may be issued to either the owner or persons in charge of the stock.

(c) If the land to be crossed is uninclosed and the lessee thereof does not desire to waive the right to its exclusive use, the stock must be so handled that the animals will remain on the approved route of travel.

(d) If a shipping point within a grazing district is the only one reasonably accessible to persons grazing stock outside that grazing district, crossing privileges may be allowed over leased areas under such restrictions as are necessary to protect the interests of the lessee.

§ 63.20 *Rights reserved; public land laws applicable.* Grazing leases, permits, or allotments under this Part shall be subordinated to, and shall be subject to modification or revocation by the manager to the extent necessary to permit:

(a) The development of the mineral resources of the lands.

(b) The protection, development and utilization of the forests and water resources on the lands.

(c) The use of such lands for agricultural purposes.

(d) The protection, development and utilization of such other resources as may be of greater benefit to the public.

(e) The allowance of applications or the granting of rights, permits, leases or uses pursuant to the public-land laws, where the same will either be in the public interest or will not unduly interfere with the use of the land for grazing purposes.

(f) The temporary closing of portions of the leased area to grazing whenever, because of improper handling of the stock, overgrazing, fire or other cause, such action is deemed necessary to restore the range to its normal condition.

(g) Pursuant to the provisions of the act of August 1, 1946 (60 Stat. 755), all uranium or thorium, or other materials which have been or may hereafter be determined by the Atomic Energy Commission to be peculiarly essential to the production of fissionable materials contained in whatever concentration in the lands subject to this lease, are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the lands and prospect for, mine and remove the same, making just compensation for any damage or injury occasioned thereby.

§ 63.21 *Termination of lease; cancellation.* The Manager may terminate a lease at the request of the lessee, if the lessee shall make satisfactory showing that such termination will not adversely affect the public interest and has paid all charges due the Government thereunder. A lease may be canceled by the Manager, if the lessee shall fail to comply with any of the provisions of §§ 63.1–63.23, or of the lease. No lease will be canceled for default until the lessee has been formally advised of the default in complying with the provisions of the lease and afforded an opportunity to make a showing as to why the lease should not be canceled.

§ 63.22 *Liens; removal of improvements, fixtures and personal property.* A lien for all payments which become due under the lease is reserved to the United States on all improvements, fixtures, and personal property (including the livestock) of the lessee on the leased area. Such improvements, fixtures, or personal property (other than livestock) may not be removed from the lands unless all moneys due the United States under the lease have been paid.

If the lessee on or before the termination of his lease notifies the manager of his determination to leave on the land improvements the construction or maintenance of which has been authorized, no other person shall use or occupy, under any grazing lease or entry under any public land law, the land on which such improvements are located until there has been paid to the person entitled thereto the value of such improvements. If the interested parties are unable to reach an agreement as to such value, the amount may be fixed by the Regional Administrator. All such agreements, to be effective, must be approved by the Regional Administrator. The failure of the subsequent lessee to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the lease.

The lessee shall be given 90 days from the date of the termination of this lease by expiration or forfeiture, in the absence of an agreement to the contrary and if all rental charges due the Government have been paid, to remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time mentioned shall become the property of the United States.

§ 63.23 *Appeals.* An appeal may be taken from any decision of the Manager, or of the Regional Administrator to the Director, and from any decision of the latter to the Secretary of the Interior, pursuant to the rules of practice (43 CFR, Part 221).

Regulations superseded. The foregoing §§ 63.1 to 63.23, inclusive, supersede §§ 63.1 to 63.26, inclusive, of Title 43 of the Code of Federal Regulations, 1938 edition.

MARION CLAWSON,
Director.

Approved: November 18, 1949.

MASTIN G. WHITE,
Acting Assistant Secretary of the Interior.

[F. R. Doc. 49-9433; Filed, Nov. 23, 1949; 8:45 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1745]

PART 75—SALES AND LEASES

TRANSFER TO ALASKA HOUSING AUTHORITY OF LANDS UNDER JURISDICTION OF DEPARTMENT OF THE INTERIOR

Sec.
75.15 Statutory authority.
75.16 Policy.
75.17 Definitions.
75.18 Request by Authority for transfer of property interest.
75.19 Action on request.
75.20 Publication of proposed transfer.
75.21 Use permission pending survey or issuance of patent.
75.22 Special provisions and reservations in instrument of transfer.

AUTHORITY: §§ 75.15 to 75.22 issued under R. S. 453, 2478, 43 U. S. C. 2, 1201; 5 U. S. C. 485.

§ 75.15 *Statutory authority.* Section 6 of the Alaska Housing Act of April 23, 1949 (Public Law 52, 81st Cong.) authorizes any executive department or agency of the Federal Government to sell, transfer, and convey to the Alaska Housing Authority at fair value, as determined by such department or agency, for use under that act, all or any right, title, and interest in any real or personal property under the jurisdiction of such department or agency which it determines to be in excess of its own requirements, notwithstanding any limitations or requirements of law with respect to the use or disposition of such property. The section provides that the authority conferred thereby shall be in addition to and not in derogation of any other powers and authorities of such department or agency.

§ 75.16 *Policy.* The Department of the Interior has been gravely concerned about the critical housing shortage in Alaska, which has been a major obstacle to the proper development of the Territory and to the economic life of its population. The act, which seeks to ameliorate this dire shortage, will be liberally construed to foster the development of the urgently needed housing program.

In order to effectuate the objectives of the act, prompt consideration will be given to all requests filed under the regulations in this part. To facilitate prompt action, the requests should contain complete information and data required by § 75.18.

That lands are withdrawn in aid of a function of the Department of the Interior, or for shore space, will not preclude the disposal of such lands under the act if the lands are found to be in excess of the needs of this Department. However, lands situated in national parks and monuments, fish and wildlife refuges, and Indian lands will not be made available for disposal under the act unless a positive showing is also made of the unavailability of other lands in the general area suitable for the desired purpose. Requests will not be approved until such time as the information and data required by §§ 75.15 to 75.22 are furnished to the Regional Administrator.

Except to the extent previously indicated, the use of lands under the act, if not already appropriated under the public-land laws or actually used by Federal agencies, will be regarded as a higher use than the other uses authorized by the public-land laws.

Requests should be made only in connection with specific housing projects, and may be made before the plans of construction have been completely formulated. However, requests should not be made until the Authority has determined that it will construct a specific project on the lands, the number and type of housing units to be included in the project, and the acreage and area needed for such project.

Where lands are affected by a permit granted to another department or to any agency thereof, the consent of such department or agency to the proposed conveyance is required before a request may be approved.

§ 75.17 *Definitions.* As used in §§ 75.15 to 75.22, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) The "act" means the Alaska Housing Act of April 23, 1949 (Public Law 52, 81st Cong.).

(b) "Authority" means the Alaska Housing Authority.

(c) "Regional Administrator" means the Regional Administrator, Region VII, Bureau of Land Management, Anchorage, Alaska.

(d) "Property interest" means the title to or any other interest in land, including easements and leaseholds.

(e) "Instrument of transfer" includes a patent, deed, lease, or other instrument transferring a property interest.

§ 75.18 *Request by Authority for transfer of property interest.* Each request by the Authority for the transfer to it of a property interest in public lands or other federally owned lands under the jurisdiction of the Department of the Interior in Alaska should be addressed to and filed with the Regional Administrator, should be in duplicate, and should contain the following:

(a) A description of the land, if surveyed, by legal subdivision, specifying section, township and range; unsurveyed lands should be described by metes and bounds with a tie to a corner of the public land surveys if within two miles; otherwise, a tie should be made to some permanent topographic feature and the approximate latitude and longitude should be given when practicable.

(b) If the application includes unsurveyed lands, a statement that the Authority has plainly indicated on the ground the corners of the land applied for by setting substantial posts or heaping up mounds of stones at each corner.

(c) A statement showing whether there are any hot springs or other springs having waters possessing curative properties upon any legal subdivision of the land requested, if the land is surveyed; and if the land is unsurveyed, whether any portion of the land is within an area of one-quarter of a mile from such spring or springs.

(d) A statement identifying the proposed project, the acreage required, and showing the number and type of housing units to be included therein, and the desirability or suitability of the site for the particular project.

(e) A statement showing the need for the particular land and the property interest therein requested by the Authority.

(f) The date construction of improvements on the land is contemplated.

(g) A statement showing whether any portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska, or whether the land is occupied, improved or appropriated by any person claiming the same other than the Authority.

§ 75.19 *Action on request.* Upon receipt of a request from the Authority, the Regional Administrator will ascertain from all interested agencies of the Department of the Interior whether the proposed conveyance would be inconsistent with their needs. He will also cause to be made an examination and appraisal of the lands. He will then determine whether the lands are in excess of the requirements of the Department of the Interior and of any agency thereof.

Published in Federal Register, Volume 15, Number 4, of January 7, 1950, page 61

If the Regional Administrator determines that the lands are in excess of the requirements of the Department of the Interior and of any agency thereof, he will so advise the Authority and also advise it as to the fair value of the lands considering the use to which they are to be put, and as to covenants, terms, and conditions under which the requested transfer will be made. Any such conveyance will be made subject to valid existing rights of record, and to those disclosed as a result of posting, publication, or otherwise.

§ 75.20 *Publication of proposed transfer.* The Regional Administrator will require the Authority to publish at its expense, in a newspaper of general circulation in the land district in which the land is situated, a notice stating that a request has been made by the Authority to acquire an interest (describing it) in certain lands (describing them) under the act, for housing purposes, and that the purpose of the notice is to give persons claiming an interest in the lands, or having bona fide objections to the transfer, an opportunity to file with the Regional Administrator within 30 days after the date of the first publication a protest, together with evidence that a copy of the protest has been served on the Authority. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue; if a weekly, for four consecutive issues; and if a semi-weekly or tri-weekly, in any of the issues on the same day for four consecutive weeks. The notice will be posted during the entire period of publication in the land office for the district in which the lands are situated. The Regional Administrator will also require the Authority to keep a notice posted on the land throughout the entire period of publication. No transfer will be made until proof of publication and posting of the notice has been filed with the Regional Administrator.

After the Authority has made payment for the lands and complied with all of the requirements made by the Regional Administrator, that officer will so advise the Director, Bureau of Land Management, who will then direct the issuance of the instrument of transfer.

§ 75.21 *Use permission pending survey or issuance of patent.* Where the Regional Administrator has advised the Authority that it has complied with all the requirements imposed on it under §§ 75.15 to 75.22 by the Regional Administrator, he may, upon request, permit the Authority to occupy and use the lands pending the survey thereof, or the issuance of patent.

If unsurveyed public lands are included in a request, patent therefor cannot be issued until the lands have been surveyed. In such cases the Regional Administrator, when he advises the Authority that it may use and occupy the lands pending a survey, will cause a survey to be made as expeditiously as limitations of personnel and available funds permit.

§ 75.22 *Special provisions and reservations in the instrument of transfer.* Each instrument of transfer made under §§ 75.15 to 75.22 inclusive of fee title or lesser estate in the land shall contain:

(a) The covenants, terms, and conditions requested by the Authority, as well as those required for the protection of the Department of the Interior, or any agency thereof.

(b) A reservation to the United States of the oil, gas, and other mineral deposits in the lands, together with the right of the United States, its agents, representatives, lessees or permittees, to prospect for, mine, and remove the same, under such regulations as the Secretary of the Interior may prescribe.

(c) Where public lands are involved, a reservation to the United States of fissionable source materials pursuant to the act of August 1, 1946 (60 Stat. 755; 42 U. S. C. sec. 1801), and where non-public lands are involved, pursuant to Executive Order No. 9908 of December 5, 1947 (12 F. R. 8223-4).

MARION CLAWSON,
Director.

Approved: December 30, 1949.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50-121; Filed, Jan. 6, 1950; 8:46 a. m.]

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Circular No. 1746

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

PART 67—INDIANS AND ESKIMOS

RULES OF PRACTICE FOR HEARINGS UPON POSSESSORY CLAIMS TO LANDS AND WATERS OCCUPIED BY NATIVES OF ALASKA

Section 67.18a (a) is amended to read as follows:

§ 67.18a *Rules of practice for hearings upon possessory claims to lands and waters used and occupied by natives of Alaska.* (a) Petitions of native groups of Alaska concerning possessory claims to lands and waters based upon any of the foregoing statutes or upon use or occupancy maintained from aboriginal times to the present day, but not evidenced by formal patent, deed or Executive order, shall be filed with the Secretary of the Interior on or before December 31, 1950. No petition filed thereafter will be considered by the Department. A copy of any such petition shall be forthwith transmitted to the Commissioner of Indian Affairs and the Director of the Bureau of Land Management for preliminary investigations and reports, and such reports shall be made a part of the record at the hearing.

OSCAR L. CHAPMAN,
Secretary of the Interior.

DECEMBER 30, 1949.

[F. R. Doc. 50-122; Filed, Jan. 6, 1950; 8:46 a. m.]

Published in Federal Register
Volume 15, Number 4, of January 7, 1950,
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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1747]

PART 185—GENERAL MINING REGULATIONS

TEMPORARY DEFERMENT OF ASSESSMENT WORK UNDER CERTAIN CONDITIONS

Sec.
185.98 Statutory authority.
185.99 Conditions under which deferment may be granted.
185.100 Filing of petition for deferment, contents.
185.101 Notice of action on petition to be recorded.
185.102 Period for which deferment may be granted.
185.103 When deferred assessment work is to be done.

AUTHORITY: §§ 185.98 to 185.103, issued under secs. 1–5, Pub. Law 115, 81st Cong.

§ 185.98 *Statutory authority.* The act of June 21, 1949 (Pub. Law 115, 81st Cong.), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 185.99 *Conditions under which deferment may be granted.* The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 185.100 *Filing of petition for deferment, contents.* (a) In order to obtain temporary deferment, the claimant must file with the manager of the land office for the district in which the lands are situated or with the regional administrator for the State if there is no land office in the State, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one copy thereof a copy of the notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one year period for which deferment is requested.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

§ 185.101 *Notice of action on petition to be recorded.* The claimant must file or record, in the office in which he filed or recorded his notice of petition, a copy of the order or decision disposing of the petition.

§ 185.102 *Period for which deferment may be granted.* If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 185.103 *When deferred assessment work is to be done.* All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and shall be in addition to the annual assessment work required by law for such year.

MARION CLAWSON,
Director.

Approved: February 14, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50–1406; Filed, Feb. 17, 1950; 8:48 a. m.]

Published in Federal Register
Vol. 15, No. 34, of February 18,
1950, page 894

DISTRIBUTION - L-1
Washington Div. and Branch Chiefs
Region VI - (6)

Circular No. 1748

Office Copy

Replaced by #1788

MAR 1951
Bureau of Land Management
Montana Land Office
Billings, Montana

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON 25, D.C.

CODE OF FEDERAL REGULATIONS
TITLE 43—PUBLIC LANDS: INTERIOR

PART 193—COAL PERMITS, LEASES AND LICENSES

GENERAL STATEMENT

Obsolete

A new section 193.4a is added to read as follows:

Sec. 193.4a HHolders of leases or permits affecting lands or coal deposits in Oklahoma transferred to the United States. A holder of a lease or permit, including a lease under temporary extensions, outstanding on May 24, 1949, and expiring on or before January 1, 1951, covering certain coal lands or coal deposits in Oklahoma which the Choctaw and Chickasaw Nations agreed to convey to the United States in a contract ratified by the Act of June 24, 1948 (62 Stat. 596), who has maintained or acted diligently to maintain the lease or permit in good standing, may obtain a lease for the same lands or deposits without competitive bidding, provided that he files an application for a lease under this part prior to January 1, 1951. A holder of a lease on such lands outstanding on May 24, 1949 and expiring after January 1, 1951, who has maintained the lease in good standing, may obtain a lease for the same lands or deposits without competitive bidding, provided he files an application for a lease under this part within 90 days prior to the expiration date of the current lease.

(Sec. 32, 41 Stat. 450; 30 U.S.C., 189).

(Sgd) Marion Clawson
Director

Approved: March 6, 1950

(Sgd) Oscar L. Chapman

Secretary of the Interior

DISTRIBUTION

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AMENDED By Circ. 181
As To: 221.73

Amended By Circ. 1818, to .

Replaced by 1950 (11/58)

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter 1—Bureau of Land Management, Department of the Interior

(Circular 1749)

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NOTE: Reprint, March 1950, 43 CFR, Part 221, as amended by Circular 1531, May 18, 1943, Circular 1690, July 28, 1948, and Order 2354, Acting Secretary of the Interior, August 13, 1947.

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Authority: §§ 221.1 to 221.96 issued under R. S. 2478; 43 U. S. C. 1201.

Source: §§ 221.1 to 221.96 contained in Rules of Practice, Sept. 1, 1926, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

Cross References: For general regulations relating to practice, see Part 220 of this chapter. For Government contests, see Part 222 of this chapter. For practice, Alaska, see Part 73 of this chapter. For public land records, see Part 240 of this chapter. For witnesses, see Part 223 of this chapter.

SUBPART A—PROCEEDINGS BEFORE MANAGER

INITIATION OF CONTESTS OR PROTESTS

§ 221.1 *By whom contests or protests may be initiated.* (a) Contests may be initiated by any person seeking to acquire title to, or claiming an interest in, the land involved, against a party to any entry, filing, or other claim under laws of Congress relating to the public lands, because of priority of claim, or for any sufficient cause affecting the legality or validity of the claim, not shown by the records of the Bureau of Land Management.

(b) Any protest or application to contest filed by any other person shall be forthwith referred to the regional administrator, who will promptly investigate the same and recommend appropriate action.

APPLICATION TO CONTEST

§ 221.2 *Form of application.* Any person desiring to institute a contest must file, in duplicate, with the manager, application in that behalf, together with statement under oath containing:

(a) Name and residence of each party, adversely interested, including the age of each heir of any deceased entryman.

(b) Description and character of the land involved.

(c) Reference, so far as known to the applicant, to any proceedings pending for the acquisition of title to or the use of such lands.

(d) Statement, in ordinary and concise language, of the facts constituting the grounds of contest.

(e) Statement of the law under which applicant intends to acquire title and facts showing that he is qualified to do so.

(f) That the proceeding is not collusive or speculative, but is instituted and will be diligently pursued in good faith.

(g) Application that affiant be allowed to prove said allegations and that the entry, filing, or other claim be canceled.

(h) Address to which papers shall be sent for service on such applicant.

§ 221.3 *Corroboration required.* The statements in the application must be corroborated by the affidavit of at least one witness having such personal knowledge of the facts in relation to the contested entry as, if proven, would render it subject to cancellation, and these facts must be set forth in his affidavit.

§ 221.4 *Allowance by manager.* The manager may allow any application to contest without reference thereof to the Director; but where notation on the records of the Bureau of Land Management is required, the manager must immediately forward a copy thereof to the Director, who will promptly cause proper notations to be made upon the records, and no patent or other evidence of title shall issue until and unless the case is closed in favor of the contestee.

CONTEST NOTICE

§ 221.5 *Form of notice.* The manager shall act promptly upon all applications to contest, and upon the allowance of any such application shall issue notice, directed to the persons adversely interested, containing:

(a) The names of the parties, description of the land involved, and identification, by appropriate reference, of the proceeding against which the contest is directed.

(b) Notice that unless the adverse party appears and answers the allegation of said contest within 30 days after service of notice the allegations of the contest will be taken as confessed.

SERVICE OF NOTICE

§ 221.6 *How notice may be served.* Notice of contest may be served on the adverse party personally or by publication.

§ 221.7 *Personal service.* (a) Personal service of notice of contest may be made by any person over the age of 18 years, or by registered mail; when served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing personal delivery to the party to whom the same is directed; when service is made personally, proof thereof shall be by written acknowledgment of the person served, or by affidavit of the person serving the same, showing personal delivery to the party served; except when service is made by publication, copy of the affidavit of contest must be served with such notice.

(b) When the contest is against the heirs of a deceased entryman, the notice shall be served on each heir. If the heirs of the entryman are nonresident or unknown, notice may be served upon them by publication as hereinafter provided. If the person to be personally served is an infant under 14 years of age or a person who has been legally adjudged of unsound mind, service of notice shall be made by delivering a copy of the notice to the statutory guardian or committee of such infant or person of unsound mind, if there be one; if there be none, then by delivering a copy of the notice to the person having the infant or person of unsound mind in charge.

§ 221.8 *Abatement of contest.* Unless notice of contest is personally served within 30 days after issuance of such notice and proof thereof made not later than 30 days after such service, or if service by publication is ordered, unless publication is commenced within 20 days after such order and proof of service of notice by publication is made not later than 20 days after the fourth publication, as specified in § 221.10, the contest shall abate: *Provided,* That if the defendant makes answer without questioning the service or the proof of service of said notice, the contest will proceed without further requirement in those particulars.

SERVING NOTICE BY PUBLICATION

§ 221.9 *When notice may be given by publication.* (a) Notice of contest may be given by publication only when it appears, by affidavit by or on behalf of the contestant, filed within 30 days after the allowance of application to contest and within 10 days after its execution, that the adverse party can not be found, after due diligence and inquiry, made for the purpose of obtaining service of notice of contest within 15 days prior to the presentation of such affidavit, of the postmaster at the place of address of such adverse party appearing on the recor of the land office and of the postmast nearest the land in controversy and also of named persons residing in the vicinity of the land.

(b) Such affidavit must state the last address of the adverse party as ascertained by the person executing the same.

(c) The published notice of contest must give the names of the parties thereto, description of the land involved, identification by appropriate reference of the proceeding against which the contest is directed, the substance of the charges contained in the affidavit of contest, and a statement that upon failure to answer within 20 days after the completion of publication of such notice the allegations of said affidavit of contest will be taken as confessed.

(d) The affidavit of contest need not be published.

(e) There shall be published with the notice a statement of the dates of publication.

§ 221.10 *Publication and posting of notice.* (a) Service of notice by publication shall be made by publishing notice at least once a week for four successive weeks in some newspaper published in the county wherein the land in contest lies; and if no newspaper be printed in such county, then in a newspaper printed in the county nearest to such land.

(b) Copy of the notice as published, together with copy of the affidavit of contest, shall be sent by the contestant within 10 days after the first publication of such notice by registered mail directed to the party for service upon whom such publication is being made at the last address of such party as shown by the records of the land office and also at the address named in the affidavit for publication, and also at the post office nearest the land.

(c) Copy of the notice as published shall be posted in the office of the manager and also in a conspicuous place upon the land involved, such posting to be made within 10 days after the first publication of notice as provided in paragraph (a) of this section.

§ 221.11 *Proof of service.* (a) Proof of publication of notice shall be by copy of the notice as published, attached to and made a part of the affidavit of the publisher or foreman of the newspaper publishing the same, showing the publication thereof in accordance with §§ 221.9 and 221.10.

(b) Proof of posting shall be by affidavit of the person who posted notice on the land, and the certificate of the manager as to posting in the district land office.

(c) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice, attached to the postmaster's receipt for the letter or (if delivered) the registry return receipt.

DEFECTIVE SERVICE OF NOTICE

§ 221.12 *Effect of defective service.* No contest proceeding shall abate because of any defect in the manner of service of notice in any case where copy of the notice or affidavit of contest is shown to have been received by the person to be served; but in such case the time to answer may be extended in the discretion of the manager.

ANSWER

§ 221.13 *When and how answer must be filed.* (a) Within 30 days after personal service of notice and affidavit of contest as above provided, or, if service is made by publication, within 20 days after the fourth publication, as prescribed by the rules in this part, the party served must file with the manager answer, under oath, specifically meeting and responding to the allegations of the contest, together with proof of service of a copy thereof upon the contestant by delivery of such copy at the address designated in the application to contest, or personally in the manner provide for the personal service of notice of contest.

(b) Such answer shall contain or be accompanied by the address at which all notices or other papers shall be sent for service upon the party answering.

FAILURE TO ANSWER

§ 221.14 *Effect of failure to answer.* Upon failure to serve and file answer as herein provided, the allegations of the contest will be taken as confessed, and the manager will forthwith forward the case, with recommendation thereon, to the Bureau of Land Management, and notify the parties by ordinary mail of the action taken.

DATE AND NOTICE OF TRIAL

§ 221.15 *Manager to fix time and place for trial.* Upon the filing of answer and proof of service thereof the manager will forthwith fix a time and place for taking testimony, and notify all parties thereof by registered mail not less than 20 days in advance of the date fixed.

PLACE OF SERVICE OF PAPERS

§ 221.16 *Proof of delivery of papers.* (a) Proof of delivery of papers required to be served upon the contestant at the place designated under § 221.2 (h) in the application to contest, and upon any adverse party at the place designated in the answer, or at such other place as may be designated in writing by the person to be served, shall be sufficient for all purposes; and where notice of contest has been given by registered mail, and the registry-return receipt shows the same to have been received by the adverse party, proof of delivery at the address at which such notice was so received shall, in the absence of other direction by such adverse party, be sufficient.

(b) Where a party has appeared and is represented by counsel, service of papers upon such counsel shall be sufficient.

CONTINUANCE

§ 221.17 *When hearing may be postponed.* Hearing may be postponed because of absence of a material witness when the party applying for continuance makes affidavit, and it appears to the satisfaction of the officer presiding at such hearing, that:

(a) The matter to which such witness would testify, if present, is material.

(b) That proper diligence has been exercised to procure his attendance, and that his absence is without procurement or consent of the party on whose behalf continuance is sought.

(c) That affiant believes the attendance of said witness can be had at the time to which continuance is sought.

(d) That the continuance is not sought for mere purposes of delay.

§ 221.18 *When more than one continuance may be allowed.* One continuance only shall be allowed to either party on account of absence of witnesses, unless the party applying for further continuance shall, at the same time, apply for order to take the testimony of the alleged absent witnesses by deposition.

§ 221.19 *When continuance will be denied; continuance on behalf of United States.* (a) No continuance shall be granted if the opposite party shall admit that the witness on account of whose absence continuance is desired would, if present, testify as stated in the application for continuance.

(b) Continuances will be granted on behalf of the United States when the public interest requires the same, without affidavit on the part of the Government.

DEPOSITIONS AND INTERROGATORIES

§ 221.20 *When testimony may be taken by deposition.* Testimony may be taken by deposition when it appears by affidavit that:

(a) The witness resides more than 50 miles, by the usual traveled route, from the place of trial.

(b) The witness resides without, or is about to leave, the State or Territory, or is absent therefrom.

(c) From any cause it is apprehended that the witness may be unable to, or will refuse to, attend the hearing, in which case the deposition will be used only in the event personal attendance of the witness cannot be obtained.

§ 221.21 *Affidavit required showing grounds for deposition; proposed interrogatories.* The party desiring to take deposition must serve upon the adverse party and file with the manager an affidavit setting forth the name and address of the witness and one or more of the grounds set forth in § 221.20 for taking such deposition, and that the testimony sought is material; which affidavit must be accompanied by proposed interrogatories to be propounded to the witness.

§ 221.22 *Cross interrogatories.* The adverse party will, within 10 days after service of affidavit and interrogatories, as provided in the preceding section, serve and file cross-interrogatories.

§ 221.23 *Commission to take deposition.* (a) After the expiration of 10 days from the service of affidavit for the taking of deposition and direct interrogatories, a commission to take the deposition shall be issued by the manager directed to any officer authorized to administer oaths within the county where such deposition is to be taken, which commission shall be accompanied by a copy of all interrogatories filed.

(b) Ten days' notice of the time and place of taking such deposition shall be given by the party in whose behalf such deposition is to be taken to the adverse party.

§ 221.24 *Completion of deposition.* The officer before whom such deposition is taken shall cause each interrogatory to be written out and the answer thereto inserted immediately thereafter, and said deposition, when completed, shall be read over to the witness and by him subscribed and sworn to in the usual manner before the witness is discharged, and said officer will thereupon attach his certificate to said deposition, stating that the same was subscribed and sworn to at the time and place therein mentioned.

§ 221.25 *Deposition to be returned to manager.* The deposition, when completed and certified as aforesaid, together with the commission and interrogatories, must be enclosed in a sealed package, endorsed with the title of the proceeding in which the same is taken, and returned by mail or express to the manager, who will endorse thereon the date of reception thereof, and the time of opening said deposition.

§ 221.26 *When certificate of official character is required.* If the officer designated to take the deposition has no official seal, certificate of his official character under seal must occompany the return of the deposition.

§ 221.27 *Deposition by filing stipulation.* Deposition may, by stipulation filed with the manager be taken before any officer authorized to administer oaths, and either by oral examination or upon written interrogatories.

§ 221.28 *Testimony taken by order of manager.* Testimony may, by order of the manager and after such notice as he may direct, be taken before a United States Commissioner or other officer authorized to administer oaths, at a time and place to be designated in a notice of such taking of testimony. The officer before whom such testimony is taken will, at the completion of the taking thereof, cause the same to be certified to, sealed, and transmitted to the manager in the like manner as is provided with reference to depositions.

[Rules of Practice, Sept. 1, 1926, as amended by Dept. order, Oct. 26, 1928]

§ 221.29 *No charge for examining deposition.* No charge will be made by the manager for examining testimony taken by deposition.

§ 221.30 *Fees for taking testimony.* Officers designated to take testimony will be allowed to charge such fees as are chargeable for similar services in the local courts, the same to be taxed in the same manner as costs are taxed by managers.

§ 221.31 *Substitution of officer to take testimony.* When the officer designated to take deposition cannot act at the time fixed for taking the same, such deposition may be taken at the same time and place before any other qualified officer designated for that purpose by the officer named in the commission or by agreement of the parties.

§ 221.32 *Time for issuing order to take testimony.* No order for the taking of testimony shall be issued until after the expiration of time allowed for the filing of answer.

TRIALS

§ 221.33 *Exclusion of witnesses from the trial.* The manager and other officers taking testimony may exclude from the trial all witnesses except the one testifying and the parties to the proceeding.

§ 221.34 *Examination of witnesses by manager.* The manager will be careful to reach, if possible, the exact condition and status of the land involved in any contest, and will ascertain all the facts having any bearing upon the rights of parties in interest; to this end said officer should, whenever necessary, personally interrogate and direct the examination of a witness.

§ 221.36 *Facts to be ascertained under homestead and other laws.* Under the homestead and other laws, the conditions affecting the inception of the alleged right, as well as the subsequent acts of the respective claimants, must be fully and specifically examined. The manager will particularly ascertain the nature, extent, and value of alleged improvements; by whom made, and when; the true date of the settlement of pe sons claiming; the steps taken to mark and secure the claim; and the exact status of the land at that date as shown upon the records of his office.

§ 221.37 *Cross-examination of witnesses.* Due opportunity will be allowed opposing claimants to cross-examine witnesses.

§ 221.38 *Objections to evidence.* Objections to evidence will be duly noted, but not ruled upon, by the manager, and such objections will be considered by the Director. Officers before whom testimony is taken will summarily stop examination which is obviously irrelevant.

§ 221.39 *Testimony to be reduced to writing.* (a) At the time set for hearing, or at any time to which the trial may be continued, the testimony of all the witnesses present shall be taken and reduced to writing.

(b) When testimony is taken in shorthand the stenographic notes must be transcribed, and the transcription subscribed by the witness and attested by the officer before whom the testimony was taken: *Provided, however,* That when the parties shall, by stipulation, filed with the record, so agree, or when the defendant has failed to appear, or fails to participate in the trial, and the contestant shall in writing so request, such subscription may be dispense with.

(c) The transcript of testimony shall, in all cases, be accompanied by certificate of the officer or officers before whom the same was taken, showing that each witness was duly sworn before testifying, and, by affidavit of the stenographer who took the testimony, that the transcription thereof is correct.

§ 221.40 *Action on demurrers.* (a) If a defendant demurs to the sufficiency of the evidence, the manager will forthwith rule thereon. If such demurrer is overruled, and the defendant elects to introduce no evidence, no further opportunity will be afforded him to submit proofs.

(b) When testimony is taken, before an officer other than the manager, demurrer to the evidence will be received and noted, but no ruling made thereon, and the taking of evidence on behalf of the defendant will be proceeded with; the manager will rule upon such demurrer when the record is submitted for his consideration.

(c) If said demurrer is sustained, the manager will not be required to examine the defendant's testimony. If, however, the demurrer be overruled, all the evidence will be considered and decision rendered thereon.

(d) Upon the completion of the evidence in a contest proceeding, the manager will render a report and opini thereon making full and specific reference to the posting and annotations upon the records.

§ 221.41 *Decision of manager; right to move for new trial, or appeal.* The manager will, in writing, notify the parties to any proceeding of the conclusion therein, and that 15 days will be allowed from the receipt of such notice to move for new trial upon the ground of newly discovered evidence, and that if no motion for new trial is made, 30 days will be allowed from the receipt of such notice within which to appeal to the Director.

NEW TRIAL

§ 221.42 *Ground for new trial.* (a) The decision of the manager will be vacated and new trial granted only upon the ground of newly discovered evidence, in accordance with the practice applicable to new trials in courts of justice: *Provided, however,* That no such application shall be granted except upon showing that the substantial rights of the applicant have been injuriously affected.

(b) No appeal will be allowed from an order granting new trial, but the manager will proceed at the earliest practicable time to retry the case, and will, so far as possible, use the testimony therefore taken without reexamination of same witnesses, confining the taking of testimony to the newly discovered evidence.

§ 221.43 *Notice of motion for new trial; time for answer.* Notice of motion for new trial, setting forth the grounds thereof, and accompanied by copies of all papers not already on file to be used in support of such motion, shall be served upon the adverse party, and, together with proof of service, filed with the manager not more than 15 days after notice of decision; the adverse party shall, within 10 days after such notice, serve and file affidavits or other papers to be used by him in opposition to such motion.

§ 221.44 *Consideration of motions for new trial.* Motions for new trial will not be considered or decided in the first instance by the Director or the Secretary of the Interior, or otherwise than on review of the decision thereof by the manager.

§ 221.45 *Manager to forward all papers to Director.* (a) If motion for new trial is not made, or if made and not allowed, the manager will, at the expiration of the time for appeal, promptly forward the same, with the testimony and all papers in the case, to the Director, with letter of transmittal, describing the case by its title, nature of the contest, and the land involved.

(b) The manager will not, after forwarding of decision, as provided in paragraph (a) of this section, take further action in the case unless so instructed by the Director.

FINAL PROOF, PENDING CONTEST

§ 221.46 *Submission of final proof excused pending disposition of proceedings.* (a) The pendency of a contest will excuse the submission of final proof on the entry involved until a reasonable time after the disposition of the proceedings, but final or commutation proof may be submitted at any stage thereof. The payment of the final commissions or purchase money, as the case may be, should be deferred until the case is closed, when, if the contest is dismissed and the proof is found satisfactory, claimant will be allowed 30 days from notice within which to pay all sums due and furnish a nonalienation affidavit, upon receipt of which the proper form of final certificate will issue.

(b) In such cases the fee for reducing the proof testimony to writing must be paid at the time the proof is submitted.

(c) The final proof should be retained in the district land office until the record in the contest case is forwarded to the Bureau of Land Management, but will not be considered in determining the merits of the contest, though it may be used for the purpose of cross-examination during the trial.

(d) In such cases the party making the proof will at the time of submitting same be required to pay the fees for reducing the testimony to writing.

APPEALS TO DIRECTOR

§ 221.47 *Service and filing of notice required.* No appeal from the action or decision of the manager will be considered unless notice thereof is served and filed in the district land office in the manner and within the time specified in § 221.48.

§ 221.48 *Notice of appeal; filing of briefs.* Notice of appeal from the decision of the manager shall be served upon the adverse party and filed with the manager within 30 days after receipt of notice of the decision. Within 20 days after service of notice of appeal, the appellant may file a brief, a copy of which must be served upon the appellee. Within 20 days after such service the appellee may file his brief, a copy of which must be served upon the appellant. Briefs must be served upon the opposing party within the same period of time allowed for their filing with the manager. When a motion for a new trial is made and denied, notice of an appeal shall be served within 15 days after the receipt of notice of the denial of the motion.

[Circ. 1531, 8 F. R. 6853]

§ 221.49 *Effect of failure to answer or appear.* No person who has failed to answer the contest affidavit, or, having answered, has failed to appear at the hearing, shall be allowed an appeal from the final action or decision of the manager.

§ 221.50 *Notice of appeal to be in writing; failure to serve and file notice closes case.* (a) Such notice of appeal must be in writing, and set forth in clear, concise language the grounds of the appeal, in the form of specifications of error, which shall be separately stated and numbered; where error is based upon insufficiency of the evidence to justify the decision, in the assignment thereof the particulars wherein it is deemed insufficient must be specifically set forth in the notice. All grounds of error not assigned or noticed and argued in the brief will be considered as waived.

(b) Upon failure to serve and file notice of appeal as provided in §§ 221.47 to 221.49 the case will be closed.

§ 221.51 *Effect of failure to move for new trial or appeal.* (a) When any party fails to move for a new trial or to appeal from the decision of the manager within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of fraud or gross irregularity.

(b) No case will be remanded for any defect which does not materially affect the aggrieved party.

§ 221.52 *Manager to keep all documents on file.* All documents received by the manager must be kept on file and the date of filing noted thereon; no papers will, under any circumstances, be removed from the files or from the custody of the manager, but access to the same, under proper regulations, and so as not to interfere with transaction of public business, will be permitted to the parties or their attorneys.

COSTS AND APPORTIONMENT THEREOF

§ 221.53 *Costs to preference-right and other claimants.* A contestant claiming preference right of entry under the second section of the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185), must pay the costs of contest. In other cases each party must pay the cost of taking the direct examination of his own witnesses and the cross-examination on his behalf of other witnesses; the cost of noting motions, objections, and exceptions must be paid by the party on whose behalf the same are made.

§ 221.54 *Excessive costs.* Accumulation of excessive costs will not be permitted. When the officer before whom testimony is being taken shall rule that a course of examination is irrelevant, the same will not proceed except at the sole cost of the party insisting thereon and upon his depositing the amount reasonably sufficient to pay therefor.

§ 221.55 *Cost to settlers.* Where a party contesting a claim shall by virtue of actual settlement and improvement establish his right of entry of the land in contest under the homestead, or desert-land laws by virtue of settlement and improvement without reference to the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185) the costs of contest will be imposed as prescribed in the second sentence of § 221.53.

Cross References: See the following parts in this chapter: For homesteads, Alaska, Parts 65, 66; for homesteads, generally, Parts 166–170; for soldiers' and sailors' homestead rights, Part 181; for desert-land entries, Part 232.

§ 221.56 *Cost chargeable by managers.* The only cost of contest chargeable by managers are the legal fees for reducing testimony to writing. No other contest fees or costs will be allowed to or charged by those officers, directly or indirectly.

§ 221.57 *Security for costs.* Managers may at any time require either party to give security for costs, including expense of taking and transcribing testimony.

§ 221.58 *Return of excess deposit.* Upon the filing of the transcript of the testimony in the district land office, any excess in the sum deposited as security for costs of transcribing testimony will be returned to the parties depositing the same.

§ 221.59 *Cost to Government.* When hearings are ordered on behalf of the Government all costs incurred on its behalf will be paid from the proper appropriation, and when, upon the discovery of reason for suspension in the usual course of examination of entries and contest, hearings are ordered between contending parties, the costs will be paid as required by § 221.53.

§ 221.60 *Collection of costs.* The costs provided for by the preceding rules will be collected by the manager when the parties are brought before him in obedience to the order for hearing.

NOTICES

§ 221.61 *Preparation and service of notices.* All notices and other papers not required to be served by the manager must be prepared and served by the respective parties.

§ 221.62 *Manager to make provision for notices not specifically provided for.* The manager will require proper provision to be made for such notices not specifically provided for in the rules in this part as may become necessary in the usual progress of the case to final decision.

APPEAL FROM DECISION REJECTING APPLICATION TO ENTER PUBLIC LANDS

§ 221.63 *Action by manager to facilitate appeals.* To facilitate appeals from his action relative to applications to file, enter, or locate upon the public lands, the manager will:

(a) Endorse upon every rejected application the date of presentation and reasons for rejection.

(b) Promptly advise the party in interest of the action and of his right of appeal.

(c) Note upon his records a memorandum of the transaction.

§ 221.64 *When notice of appeal must be filed; form of notice.* The party aggrieved will be allowed 30 days from receipt of notice in which to file notice of appeal in the district land office. The notice of appeal, when filed, will be forwarded to the Bureau of Land Management with full report upon the case, which should recite all the facts and proceedings had and must embrace the following particulars:

(a) The original application, with reasons for the rejection thereof.

(b) Description of the tract involved and statement of its status, as shown by the records of the district office.

(c) Reference to all entries, filings, annotations, memorandum, and correspondence shown by the record relating to said tract and to the proceedings had.

SUBPART B—PROCEEDINGS BEFORE THE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT AND SECRETARY OF THE INTERIOR

EXAMINATION AND ARGUMENT

§ 221.66 *Notice of orders or decisions of the Director.* The Director will cause notice to be given to each party in interest whose address is known of any order or decision affecting the merits of the case or the regular order of proceedings therein.

§ 221.67 *When additional evidence will be considered.* No additional evidence will be admitted or considered by the Director unless offered under stipulation of the parties or in support of a mineral application or protest: *Provided, however,* That the Director may order further investigation made or evidence submitted upon particular matters to be by him specifically designated.

Affidavits or other ex parte statements filed in the office of the Director will not be considered in finally determining any controversy upon the merits.

§ 221.68 *When action will be taken by the Director.* After receipt of the record by the Director 30 days will be allowed to expire before any action is taken thereon, unless, in the judgment of the Director, public policy or private necessity shall require summary action, in which event he will proceed at his discretion, first notifying the attorneys of record of his intention so to do: *Provided,* That where no appeal has been filed the case may be immediately considered and disposed of.

§ 221.69 *Effect of failure to file brief.* If brief is not filed before a case is reached in its order for examination, the argument will be considered closed, and no further argument or motion of any kind will be entertained, except upon application and upon good cause appearing to the Director therefor.

§ 221.70 *When oral argument may be presented.* In the discretion of the Director, oral argument may be presented, at a time to be fixed by him and upon notice to opposing counsel, which notice shall specify the time for such argument and the specific matter to be discussed. Except as herein provided, oral hearings or suggestions will not be allowed.

REHEARINGS

§ 221.71 *Motion for rehearing not allowed.* No motion for rehearing of any decision rendered by the Director of the Bureau of Land Management will be allowed.

MOTIONS

§ 221.72 *Action on motions; consideration of additional evidence.* (a) No motion shall be entertained or considered in any case after the record has been transmitted to a reviewing officer.

(b) In ex parte cases, where the entryman has been allowed by the Director to furnish additional evidence or to show cause, or, in the alternative, to appeal, both the evidence or showing and the appeal are filed, the Director shall pass upon the evidence or showing submitted, and, if found sufficient, note the appeal as closed. If such evidence or showing be found insufficient, the appeal will be forwarded to the Secretary as in other cases.

APPEAL FROM THE DIRECTOR TO THE SECRETARY

See Circ 1812

§ 221.73 *When appeal may be taken to the Secretary of the Interior.* In any proceeding relating to the public lands, an appeal may be taken to the Secretary of the Interior from a final decision of the Director or from a decision of the Director which, prior to promulgation, has been approved by the Secretary. [Order 2354, 12 F. R. 5596]

§ 221.74 *Effect of failure of appeal from adverse decision of manager.* No appeal shall be had from the action of Director affirming the decision of the manager in any case where the party adversely affected shall have failed to appeal from the decision of said manager.

See Circ 1818

§ 221.75 *When notice of appeal must be served and filed.* Notice of appeal from the Director's decision must be served upon the adverse party and filed in the office of the manager or in

221.77 - 221.79 revoked by Circ. 1818

eau of Land Management within 30 days from the date of service of notice of such decision.

Circ 1818

§ 221.76 *Action by Director on defective appeal.* When the Director considers an appeal defective he will notify the party thereof; and if the defect be not cured within 15 days from the date of receipt of such notice, the appeal may be dismissed and the case closed.

§ 221.77 *Application for certiorari.* In proceedings before the Director in which he shall decide that a party has no right to appeal to the Secretary, such party may apply to the Secretary for an order directing the Director to certify said proceedings to the Secretary and suspend action until the Secretary shall pass upon the same; such application shall be in writing, under oath, and fully and specifically set forth the grounds upon which the same is made.

§ 221.78 *Suspension when Director does not allow appeal.* When the Director shall decide against the right of appeal he will suspend action on the case for 20 days from service of notice of such decision to enable the party against whom the decision is rendered to apply to the Secretary for an order certifying the record as provided for in the preceding section.

221.79 *Filing of briefs.* Within 20 s after service of the notice of appeal, the appellant may file a brief, a copy of which must be served upon the appellee. Within 20 days after such service, the appellee may file his brief, a copy of which must be served upon the appellant. Briefs must be served upon the opposing party within the same period of time allowed for their filing with the manager.

[Circ. 1531, 8 F. R. 6853]

ORAL ARGUMENT BEFORE THE SECRETARY

§ 221.80 *When oral argument will be allowed.* Oral argument in any case pending before the Secretary of the Interior will be allowed, on motion, in the discretion of the Secretary, at a time to be fixed by him, after notice to the parties. The counsel for each party will be allowed only one-half an hour, unless an extension of time is ordered before the argument begins.

SUPERVISORY POWER OF THE SECRETARY

§ 221.83 *Power of Secretary.* In proceedings before the Secretary of the Interior, the same rules shall govern, insofar as applicable, as are provided for proceedings before the Director of the Bureau of Land Management, but no rule of practice shall be construed to deprive the Secretary of any power conferred upon him by law.

ler 2354, 12 F. R. 5597]

ATTORNEYS

§ 221.84 *Regulations governing attorneys.* Every attorney, before practicing before the Department of the Interior and its bureaus, must comply with the requirements of the regulations prescribed by the Secretary of the Interior pursuant to section 5 of the act of July 4, 1884 (23 Stat. 101; 5 U. S. C. 493).

CROSS REFERENCE: For regulations relating to practitioners, see Part 1 of this title.

§ 221.85 *Service on attorney.* (a) In all cases where any party is represented by attorney, such attorney will be recognized as fully controlling the same on behalf of his client, and service of any notice or other paper relating to such proceedings upon such attorney will be deemed notice to the party in interest.

(b) Where a party is represented by more than one attorney, service of notice or other papers upon one of said attorneys shall be sufficient.

§ 221.86 *Name and address of attorney and client required.* No person hereafter appearing as a party or attorney in any case shall be entitled to notice of any proceeding therein who does not, at the time of appearance, file in the office in which the case is pending a statement showing his name and post-office address and the name and post-office address of the party whom he represents.

§ 221.87 *Attorney allowed access to records.* Any attorney in good standing employed, and whose appearance is regularly entered in any case pending before the Department, will be allowed full opportunity to consult the records therein, together with abstracts, field notes, tract books, and correspondence which is not deemed privileged and confidential.

§ 221.88 *Verbal or other inquiries.* Verbal or other inquiries by parties or counsel directed to any employee of the Department, except the Director, Associate Director, Assistant Director, or Chief Counsel, or chief of division or branch of the Bureau of Land Management, or the Secretary, Under Secretary or Assistant Secretaries, the Solicitor, or Assistant Solicitors or members of the Board of Appeals, or with the consent of one or more of said officers, is expressly forbidden.

§ 221.89 *Cause for disbarment proceedings.* Abuse of the privilege of examining records of the Department or violation of the foregoing rule by any attorney will be treated as sufficient cause for institution of disbarment proceedings.

CROSS REFERENCE: For requirements on the first appearance of a practioner in any matter, see § 1.7 of this title; for notice to practitioner in a case where there is no district land office in the State in which the land involved is situated, see § 220.15 of this chapter.

§ 221.89a *Attorneys and agents not disqualified to act as notaries in public land cases in which they may be interested.* In view of section 3 of the act of June 3, 1948 (62 Stat. 301), attorneys and agents in public land cases who are also notaries public are no longer disqualified under section 1–501 D. C. Code from taking acknowledgments, administering oaths, certifying papers or performing any official acts as notaries in such matters.

[Circ. 1690, 13 F. R. 4637]

SERVICE OF NOTICES

§ 221.90 *Time allowed for service.* (a) Fifteen days, exclusive of the day of mailing, will be allowed for the transmission of notice or other papers by mail from the Bureau of Land Management, except in case of notice to resident attorneys, in which case 1 day will be allowed.

(b) In computing time for service of papers under the rules in this part the first day shall be excluded and the last day included: *Provided,* That where the last day is a Sunday, a legal holiday, or half holiday such time shall include the next full business day.

§ 221.91 *When and how notice shall be served.* Notice of all motions and proceedings before the Director or Secretary, except as specified below, shall be served upon parties or counsel personally or by registered mail, and no motion will be entertained except on proof of service of notice thereof.

§ 221.92 *Rules governing ex parte proceedings.* Ex parte proceedings and proceedings in which the adverse party does not appear will, as to notice of decision, time for appeal, and filing of exceptions and arguments, be governed by the rules prescribed in other cases, so far as the same are applicable. In such cases the Director or Secretary may, pursuant to application and upon good cause being shown therefor, permit additional evidence to be presented for the purpose of curing defects in the proofs of record.

INTERVENTION

§ 221.93 *Application to intervene.* No person shall be allowed to intervene in any case except upon application therefor, under oath, showing his interest therein.

SUBPART C—GENERAL

HOW TRANSFEREES AND ENCUMBRANCERS MAY ENTITLE THEMSELVES TO NOTICE OF CONTEST OR OTHER PROCEEDINGS

§ 221.94 *Notice to be filed in district land office.* Transferees and encumbrancers of land the title to which is claimed or is in process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the district land office, become entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting such land which is required to be given the original entryman or claimant. Every such notice of a transfer or encumbrance must be forthwith noted upon the records of the district land office and be promptly reported to the Bureau of Land Management, where like notation thereof will be made. Thereafter such transferee or encumbrancer, as well as the entryman, must be made a party defendant to any proceeding against the entry.

ACKNOWLEDGMENT OF THE FILING OF APPLICATIONS AND OTHER PAPERS

§ 221.95 *When receipt of papers will be acknowledged.* The Secretary and the Director of the Bureau of Land Management will not acknowledge the receipt of papers forwarded by mail, but if a prepared receipt is forwarded to a district land office with any paper the manager will sign and return the receipt to the party who forwarded the same, after inserting the date and the serial number.

NOTICE OF PREFERENCE RIGHT

§ 221.96 *Procedure where preference right is awarded; fee to manager.* Where preference right of entry is awarded under section 2 of the act of May 14, 1880 (21 Stat. 141; 43 U. S. C. 185), the manager will, after service of notice of such right upon contestant and the expiration of the 30 days allowed for exercise thereof, cause the evidence of service to be filed with the canceled entry record. A fee of $1 for giving such notice must be tendered to the manager of the district land office before any application for the land will be approved.

U. S. GOVERNMENT PRINTING OFFICE : 1950 O - 880165